

IN THE CIRCUIT COURT OF
THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
CASE NO. 94-08273 CA (22)

HOWARD A. ENGLE, M.D.,
et al.,

Plaintiffs,

vs.

R.J. REYNOLDS TOBACCO

COMPANY, et al.,

Defendants.

Miami-Dade County Courthouse
Miami, Florida
Wednesday, 1:45 p.m.
January 20, 1999

TRIAL - VOLUME 183

The above-styled cause came on for trial
before the Honorable Robert Paul Kaye, Circuit

Judge,

pursuant to notice.

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APPEARANCES:

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SUSAN ROSENBLATT, ESQ.

CLIFFORD DOUGLAS, ESQ.

On behalf of Plaintiffs

DECHERT PRICE & RHOADS

ROBERT C. HEIM, ESQ.

SEAN P. WAJERT, ESQ.

On behalf of Defendant Philip Morris

COLL DAVIDSON CARTER SMITH SALTER & BARKETT

NORMAN A. COLL, ESQ.

On behalf of Defendant Philip Morris

ZACK KOSNITZKY

STEPHEN N. ZACK, ESQ.

On behalf of Defendant Philip Morris

CARLTON FIELDS WARD EMMANUEL SMITH & CUTLER

R. BENJAMINE REID, ESQ.

DOUGLAS CHUMBLEY, ESQ.

On behalf of Defendant R.J. Reynolds

JONES, DAY, REAVIS & POGUE

RICHARD M. KIRBY, ESQ.

DIANE PULLEY, ESQ.

On behalf of Defendant R.J. Reynolds

KING & SPALDING

MICHAEL RUSS, ESQ.

RICHARD A. SCHNEIDER, ESQ.

On behalf of Defendant Brown & Williamson

CLARKE SILVERGLATE WILLIAMS & MONTGOMERY

KELLY ANNE LUTHER, ESQ.

On behalf of Defendants Liggett Group

and Brooke Group

SHOOK HARDY & BACON

EDWARD A. MOSS, ESQ.

WILLIAM P. GERAGHTY, ESQ.

On behalf of Defendant Brown & Williamson

JAMES T. NEWSOM, ESQ.
On behalf of Defendant Lorillard
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APPEARANCES (Continued)
DEBEVOISE & PLIMPTON
ANNE COHEN, ESQ.
JOSEPH R. MOODHE, ESQ.
On behalf of Defendant The Council for Tobacco Research
GREENBERG TRAURIG HOFFMAN LIPOFF ROSEN & QUENTEL
DAVID L. ROSS, ESQ.
On behalf of Defendant Lorillard
MARTINEZ & GUTIERREZ
JOSE MARTINEZ, ESQ.
On behalf of Defendant Dosal Tobacco Corp.
and Tobacco Institute
KASOWITZ BENSON TORRES & FRIEDMAN
AARON MARKS, ESQ.
NANCY STRAUB, ESQ.
On behalf of Defendants Liggett Group
and Brooke Group
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	EXHIBITS	PAGE	PAGE	PAGE
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	None			
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10				
	E X H I B I T S			
11	DEFENDANTS'	OFFERED	ADMITTED	FOR ID
12	EXHIBITS	PAGE	PAGE	PAGE
13	None			
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1 (Whereupon, the following proceedings were
had:)

2 THE COURT: Are we all set?
3 MR. ROSENBLATT: No. I'm waiting on my
4 marked-up transcript on Ellen Merlo, the changes
that
5 we made. Apparently it's coming from my office
within
6 the next couple of minutes. So I'll know.
7 Mr. Douglas wants to take up something,
8 mention something to Your Honor for direction,
having
9 to do, in a way, with President Clinton's talk
last
10 night.
11 THE COURT: Yes, sir.
12 MR. DOUGLAS: Good afternoon, Your
Honor.
13 The issue that's arisen involves the fact that I
14 prepared some time ago a lengthy analysis
concerning
15 the potential for the Justice Department filing
the
16 type of lawsuit that last night the President
announced
17 they would be filing against some tobacco
companies.
18 This analysis is with a United States
19 Senator, who today, I'm told, is sending it over
to
20 Attorney General Reno. And as a result of that,
21 because he's also issuing it with a press release,
I've
22 begun to receive calls from some members of the
press
23 asking about the legal basis for the Federal
24 Government's filing this type of lawsuit.
25 Again, this lawsuit that they're filing
has

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1 no relationship, of course, to this action. This
is
2 something that I've done for about 10 years
full-time.
3 Actually, my job is doing that type of work, and
then
4 when appropriate, dealing with members of the
press to
5 provide information and analysis.
6 So the issue that's arisen, that I
wanted to
7 bring to your attention, concerns the fact that
I'm
8 going to be getting these calls, and since it has
no
9 bearing on this case and because I will be
presenting
10 myself in my private, individual capacity and not
as an
11 attorney involved in Engle, I wanted to bring this
to
12 your attention, Your Honor, and ask your guidance

13 before I give any responses.
14 THE COURT: Okay. You did this work
under
15 the auspices of who?
16 MR. DOUGLAS: It was commissioned by an
17 organization a few months ago. I've done it in my
18 independent capacity.
19 THE COURT: You made an analysis of
these
20 kinds of cases?
21 MR. DOUGLAS: Of the legal issues, the
22 statutory basis upon which the Federal Government
could
23 bring a lawsuit of this nature. And, of course,
it
24 deals not with this type of case.
25 THE COURT: I understand, because we
have
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1 some sort of a gag order here, that's where the
problem
2 comes in.
3 MR. HEIM: My concern, Your Honor, is
that
4 Mr. Douglas has appeared in this case as counsel
of
5 record with Mr. Rosenblatt. The jury has seen
6 Mr. Douglas in the courtroom. They've heard from
7 Mr. Douglas.
8 I would be concerned about any
commentary in
9 the press by Mr. Douglas on any tobacco-related
matter
10 while he's acting as co-counsel in this case.
Since we
11 are counsel in this case, all of us have been
12 instructed to refrain from commenting.
13 And while I understand fully that what
he's
14 saying is that he wouldn't be commenting about
this
15 case, it's much like me getting called when the
Third
16 Circuit affirmed the Barnes case that I argued on
17 appeal in the Third Circuit, which is a class
action of
18 tobacco smokers. It seemed to me that I shouldn't
be
19 commenting in the press while I'm subject to Your
20 Honor's order about counsel not commenting.
21 THE COURT: Well, I was mainly concerned
when
22 commenting with the issues that may affect this
case.
23 I mean, I can't keep everybody gagged up for
24 everything. The basic issue was to keep everybody
from
25 speaking with the media regarding some of the
issues or

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1 any of the issues in this case that might affect
the
2 jury.
3 I can't really keep a lawyer from
practicing
4 his trade, which is another problem. This is a
5 separate matter and a private matter which deals
with
6 some issues that really don't affect us here,
other
7 than the fact that there's a lawsuit against
tobacco,
8 or potential. I'm not even sure they filed.
9 The kinds of inquiries being made are
10 strictly in the legal area, as to what is the
basis for
11 it; background type of issues as to why the
government
12 could, should or may be in a position to sue the
13 tobacco companies.
14 MR. DOUGLAS: That's essentially true,
Your
15 Honor, and why the people in the press would be
calling
16 me for some sort of insightful reaction. It
crosses
17 over into what one might call the policy realm,
because
18 it's the Federal Government making --
19 THE COURT: What sort of attribution
would
20 they make?
21 MR. DOUGLAS: As in the past, there was
one a
22 couple of months ago; there was one that Mr. Heim
23 raised the issue that I had been cited concerning
24 Attorney General litigation. I wasn't here, of
course,
25 to respond. But he noted at the time I was cited
in my

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1 individual capacity, and I believe in the name of
the
2 organization that I am president of, which is
called
3 Tobacco Control Law and Policy Consulting. That
is my
4 moniker, as it were, that I operate under in
ordinary
5 circumstances, and that's what I would be doing in
this
6 case.
7 THE COURT: So, on the other hand, it
works
8 the other way around. Tobacco companies, of
course,
9 are going to be interviewed also and they'll want

to
10 make some comment.
11 MR. DOUGLAS: That's correct. And I
believe
12 they've already made comment in the press today
about
13 this particular issue.
14 THE COURT: If they attribute these
15 statements to you as Mr. so-and-so of whatever
16 organization you're talking about, and don't make
any
17 reference to you as being co-counsel in this case
or
18 your activities in this case, at least that's a
help.
19 I mean, it doesn't focus in on our
situation.
20 I really don't think it would be a violation of
the
21 Court's gag order overall, because the issues are
22 different. We've talked about that. The issues
in the
23 West Palm case were different; the issues in
Minnesota
24 case were different, and everything else.
25 I just didn't want to get into the
circus of

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to
1 everybody meeting on the courthouse steps talking
2 the media.
3 MR. HEIM: Well, you know, whatever Your
4 Honor thinks. I don't want to make more of
something
5 than is there.
6 I think after Your Honor expressed your
view
7 on the lawyers who were in this case, you know,
all of
8 us have tried to be and have been very, very, very
9 careful. And I have instructed my client to also
be
10 very, very careful in making comments about this
case
11 or something that might be perceived to be this
case.
12 At some point we may need to get some
more
13 clarification from Your Honor as to what you think
is
14 okay and what you think is not okay.
15 THE COURT: Well, they're really not
talking
16 about this kind of a case. That's a federal
action and
17 the other is a state action. The other was a
medical,
18 Medicaid action. The whole essence of it was
19 different.
20 MR. HEIM: The theory.

21 THE COURT: And the theory was
different.
22 So along those lines I really don't have
any
23 more problem, as long as what they're talking to
you
24 about is the legal analysis of the Federal
Government's
25 position as to why they feel they should or could
bring

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1 a lawsuit, or shouldn't, as the case may be.
2 MR. DOUGLAS: That's right.
3 THE COURT: Yes. I really don't have a
4 problem with it. I'm glad you cleared it first.
5 MR. DOUGLAS: Absolutely.
6 THE COURT: If you see anything in
print, I'd
7 like to see it.
8 MR. DOUGLAS: I'll be happy to bring it
in,
9 if it appears.
10 THE COURT: So we can look at it and see
how
11 far it went.
12 MR. HEIM: I think that's right. I'd be
13 concerned about anything -- because Mr. Douglas
has
14 been associated with this case, I'd be concerned
about
15 anything that might be construed as expressing an
16 opinion on the issues in this case as opposed to
some
17 theory.
18 THE COURT: Assuming you go out and talk
19 about, what is it, Barnes?
20 MR. HEIM: Barnes.
21 THE COURT: I'm not sure if it's still
alive
22 and kicking or whatever. There may be a reason
for
23 them to want to talk to you about it. Those are
issues
24 that are somewhat different than Engle, isn't it?
25 MR. HEIM: Barnes was a smokers' class
action

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1 in Federal Court in Philadelphia where addiction
was
2 the critical issue. The lower court found that
the
3 question of addiction was an individual issue and
4 refused to certify the class.
5 The Court of Appeals -- and also then
6 dismissed the claims of the individuals on statute
of
7 limitations grounds. The Court of Appeals for the

all of 8 Third Circuit affirmed straight down the line on
a 9 those issues. I believe the plaintiffs have filed
10 petition for rehearing en banc.
close. 11 THE COURT: But those issues are very
12 MR. HEIM: Very close, and I stayed away
from 13 it.
14 THE COURT: But this is something
different. 15 Go ahead. If you feel you want to
respond to 16 their inquiries, you may do so on a generic basis,
if 17 you can.
18 I don't know if the press will do it,
try to 19 convince them, because of the order we have here
and 20 because your name is associated. You'd like to
not 21 give information or anything that you're talking
about 22 from anything in this case or any reference in
this 23 case. You can only ask them to do that.
24 MR. DOUGLAS: Thanks, Your Honor. In
fact, 25 over the months, because it has been my job, I
have

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be 1 received calls, and because of the gag order, I'll
2 explicit that they should not identify me, if they
3 identify me at all, as being involved in this
4 litigation.
5 THE COURT: Okay, because I can't see
any way 6 that the jury would ever get ahold of any of that.
7 MR. HEIM: No. It's probably well that
with 8 this maelstrom of activity over probably the next
few 9 days, that at the end of the day today that Your
Honor 10 make a special mention of avoiding publicity or
radio 11 or television or newspapers that has anything to
do 12 with tobacco.
13 THE COURT: Okay. Thank you.
14 MR. DOUGLAS: Thank you, Your Honor.
15 THE COURT: All right. I guess we're
about 16 ready to go.
17 Did you get your copy?
18 MR. ROSENBLATT: Yes. So I'm ready.
19 THE COURT: Okay. Bring the jury out.

20 MR. ROSENBLATT: We pick up on 123. No,
21 actually 122.
22 THE COURT: 123, line 6.
23 (The jurors entered the courtroom.)
24 THE COURT: Okay. Everybody back from
lunch.
25 Everybody happy? Ready to go to work?
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1 Let's see. We are on Page 123, Line 6.
2 MR. ROSENBLATT: And we are continuing
with
3 Ellen Merlo's deposition.
4 (The deposition of Ellen Merlo was
continued
5 to be read as follows:)
6 Q. What does the vice-president of
corporate
7 affairs do?
8 A. I have several functions that report to
me:
9 government affairs, communciations, public
affairs,
10 customer service, and then community relations in
our
11 plant communities over Richmond, Louisville.
12 Q. Who heads up government affairs?
13 A. Tina Walls.
14 Q. She's the one who reports to you?
15 A. That's correct.
16 Q. And how often does she report to you?
Is
17 this on a daily basis?
18 A. Yes.
19 Q. Government affairs, it would seem to be
20 self-explanatory, but tell me, give me a thumbnail
21 description of what that is and how it differs
from
22 public affairs.
23 A. Government affairs is actually the
24 interaction and execution of our state-by-state
25 government relations programs.
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1 Q. Now, what do you mean --
2 A. It's involved with legislation, working
with
3 elected officials, lobbyists, et cetera.
4 Q. And what is public affairs?
5 A. Public affairs is the program piece that
6 supports government affairs, that develops
legislation,
7 legislative positions, programs that we may use
against
8 various strategies.
9 Also, the customer service, consumer
service
10 piece of the business reports to public affairs.
11 Philip Morris USA contributes reports to public

12 affairs. That's all part of that.
13 Q. Who's in charge of contributions to
political
14 candidates?
15 A. Well, public affairs, ultimately I'm in
16 charge. I don't make all of the recommendations
17 myself.
18 Q. What is the policy in terms of political
19 contributions, for example, let's say at the state
20 level?
21 A. That's all I concern myself with, is the
22 state level.
23 Q. You are not concerned at all with the
local
24 level?
25 A. Yes, local.

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1 Q. State and city?
2 A. Right.
3 Q. You have nothing to do with the
national?
4 A. No.
5 Q. Who handles that?
6 A. That's handled out of our Washington
7 relations office.
8 Q. Who heads that up?
9 A. Kathleen Lanahan.
10 Q. What's the address of the Washington
office?
11 A. It's the Colorado Building on -- I
forget the
12 alphabet number of the street.
13 Q. How big of a staff at the D.C. office?
14 A. Offhand, I don't know the exact number.
15 The Washington office handles government
16 affairs for all Philip Morris Companies, Kraft,
Miller
17 and everybody. I don't know exactly how large a
staff
18 it is.
19 Q. I mean, is it pretty large in the sense
of
20 over 100 employees?
21 A. No, no.
22 Q. Over 20?
23 A. Yes.
24 Q. Just so I have some idea, they deal with
all
25 the governmental regulations at the federal level?

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1 A. That's correct.
2 Q. So in terms of the state and local
level,
3 what is the policy with respect to contributing
either
4 to political candidates or to people who are
presently

5 holding office?
6 A. Basically, it would be based on their
7 position on various issues that might impact our
8 business.
9 MR. ROSENBLATT: Then we go to Page 140,

Line

10 12.
11 Q. Are there any documents that are
available to
12 the public that list separately every cultural,
13 sporting and other event or cause that any Philip
14 Morris Company contributed to?
15 A. Corporate contributions are a matter of
16 public record. Yes, they would be identified.
17 MR. ROSENBLATT: Page 147, Line 1.
18 Q. What is the strategy of the tobacco
industry
19 today on the issue of smoking and health, other
than to
20 say to the public that it still hasn't been
21 scientifically prove that cigarette smoking causes
22 cancer, heart disease and other diseases and
death?
23 Isn't that the strategy that's been consistent
with,
24 from day one, and is still the strategy today?
25 A. I believe there's a lot of information
out

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and
their
don't
that in
thousands
American
been
causes
you,
the
1 there that people are privy to that they can read
2 make up their own minds. Adults get to make up
3 minds about the issue. There are doubts. We
4 know. That's the answer.
5 MR. ROSENBLATT: Page 148, Line 1.
6 Q. Isn't the tobacco industry's position
7 spite of the Surgeon General, in spite of its
8 of scientific studies, in spite of the Center for
9 Disease Control, in spite of the American Heart
10 Association, the American Lung Association, the
11 Cancer Society, our position is that it has not
12 scientifically proven that cigarette smoking
13 cancer, heart disease and other diseases?
14 A. I believe it has not been scientifically
15 proven.
16 Q. I know you believe that. I'm saying to
17 you believe that and you've said that and that's
18 position of the tobacco industry on the issue of
19 smoking and health?
20 A. Uh-huh.
21 Q. Correct?

22 A. Yes.
23 MR. ROSENBLATT: Page 153, Line 9.
24 Q. Do you write letters to political people
25 along the line of: You should vote against this
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1 particular piece of legislation because A, B, C,
D?
2 A. No, I do not.
3 Q. That's another department?
4 A. Yes. I don't do any lobbying.
5 Q. But that department reports to you?
6 A. Yes, it does.
7 Q. Who in particular in that department?
8 A. Tina Walls is my direct report.
9 Q. Who is in charge of accommodation
programs?
10 Is that within your purview?
11 A. Yes, it is.
12 Q. What do you mean by the use of that
term?
13 A. Well, Philip Morris believes, as do
other
14 members of the industry, that the rights of both
15 nonsmokers and smokers should be respected.
Within
16 that there's the opportunity to accommodate both
17 preferences. We have developed a program called
the
18 accommodation program that we work with restaurant
19 associations and other businesses to implement.
20 MR. ROSENBLATT: We go to Page 167, Line
22.
21 Q. Are cigarettes addictive?
22 A. I don't think they are.
23 Q. Do you know?
24 A. From my own personal experience, I'd
have to
25 say no.
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1 MR. ROSENBLATT: Page 169, Line 19.
2 Q. What is the nicotine patch?
3 A. What is the nicotine patch? It's a
device
4 that people put on their arm, or wherever, to, I
5 assume, help them stop smoking.
6 Q. Why would anyone need the nicotine
patch?
7 A. I don't know.
8 MR. ROSENBLATT: Page 170, Line 14.
9 Q. I want to know, as specifically as you
can,
10 tell me what each of the divisions that reports to
you
11 in your present job does.
12 MR. ROSENBLATT: And then you go to Line
6 on
13 Page 171.

14 A. They deal with legislators and
legislation
15 that impact our business one way or another,
whether
16 it's taxation, marketing restrictions, smoking
17 restrictions, et cetera. They monitor the market;
they
18 report on legislative activity; they supervise our
19 lobbyists, consultants that work for us; they
interact
20 with other members of the industry from other
companies
21 and members of the Tobacco Institute in
formulating
22 plans and/or strategies, and/or whatever they're
23 working on. They provide the reporting back and
forth
24 to the New York office.

25 Q. Did they interact at all with the
Council for

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1 Tobacco Research?
2 A. No.
3 Q. Now, you said that they interact with
4 lobbyists. Tell me specifically about that.
5 A. Well, we employ -- Tina Walls has a
staff of
6 eight or nine what we call regional directors that
are
7 located within the various states around the
country
8 that then supervise a group of states. They have
our
9 contract lobbyists who we employ, report to each
of
10 them individually.
11 Q. What is the main function of the
lobbyists?
12 A. The main function of the lobbyists is to
work
13 within the state legislatures and/or city
councils,
14 depending on the issue that we're dealing with, to
15 protect the interest of the company and/or the
16 industry.
17 Q. Lobbyists, for example, would play a
role in
18 trying to persuade legislators to vote against
smoking
19 bans, all-inclusive smoking bans; is that true?
20 A. Lobbyists deal with a multitude of
issues
21 including smoking bans. Unless you told me about
a
22 specific piece of legislation, I can't tell you
exactly
23 what they would be doing.
24 MR. ROSENBLATT: Page 177, Line 17.
25 Q. Let's go through the other divisions
other

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1 than governmental affairs.
2 A. Okay.
3 Q. What's another division that reports to
you?
4 A. Communications.
5 Q. Okay. Tell me with some specificity
exactly
6 what they're involved in doing.
7 A. They develop press materials on various
8 issues, like excise taxes, like smoking bans and
9 accommodation, marketing restrictions, our
business
10 activity. They answer inquiries from the press
when we
11 get them. They work with the tobacco trade press
in
12 developing articles, answering questions, et
cetera.
13 Q. How big is their staff?
14 A. A director and three people.
15 Q. If the --
16 A. Sorry. Five other people. We have two
17 writers on staff in the communication group.
18 Q. And let's say that the Wall Street
Journal,
19 or any nationally-respected magazine or newspaper,
20 called you up and you verified it was a legitimate
21 newspaper, legitimate reporter: We're doing a
very
22 in-depth article on the history of Philip Morris,
on
23 the history of some of the controversial issues
over
24 the last 30 or 40 years, and we'd like you to
provide
25 us with your most knowledgeable person or persons
to

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1 sit down that we can really talk to in depth. Who
2 would you supply them with, if anyone?
3 A. I'd really need to have some specificity
of
4 exactly what they wanted to discuss, and it could
be
5 any number of people. It would not necessarily be
6 someone from my group. It might be one of the
other
7 executives who works in a particular area that
might
8 have the information. Unless I really knew the
subject
9 matter, I wouldn't know who I would suggest that
they
10 interview.
11 MR. ROSENBLATT: Page 186, Line 12.
12 Q. Tell me, with as much specificity as you

can,
13 what the public affairs department does.
14 A. The public affairs department does
several
15 things. The public affairs department develops
model
16 legislation, identifies issues, works with various
17 advocacy groups that might impact our issues, like
the
18 fire marshalls, if fire safety is an issue, we've
done
19 some work with fire marshalls. Works on
developing the
20 accommodation program and positioning it. Works
on
21 consumer and customer service. If consumers call
and
22 have questions about anything, a promotion that
they've
23 sent in for or want more information on various
issues
24 on accommodation, or who accommodates or what's
going
25 on in the various states, or how do I write to my
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1 Congressman, we supply that kind of information to
2 them.
3 And then also Philip Morris USA
corporate
4 contributions are administered through the public
5 affairs group.
6 Q. Who would be the person in charge of
drafting
7 the model legislation?
8 A. It would be done in concert, obviously,
with
9 counsel. We have people called issues managers
who
10 deal with various issues. We have someone who
works on
11 taxation; we have someone who works on advertising
12 restrictions; we have someone who works on smoking
13 restrictions. Depending on which area it would
fall
14 into, that issues managers would work with the
regional
15 director in the government affairs area, and
counsel
16 and members of other companies, and the T.I.,
17 et cetera, in addressing model legislation or
whatever
18 we were pulling together in that area.
19 MR. ROSENBLATT: Page 199, Line 17.
20 Q. What does Steve Parish do as senior
21 vice-president of external affairs of Philip
Morris?
22 A. Well, he serves as part of the senior
23 executive team reporting to Bill Campbell. He
24 obviously has the corporate affairs group that
reports

25 to him. The legal department reports to him.
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1 Q. And he has a world regulatory group that
2 reports to him --
3 MR. ROSENBLATT: Oh, I'm sorry. That
was
4 part of the answer. Say that.
5 A. And he has a world regulatory group that
6 reports to him.
7 Q. What is the world regulatory group?
8 A. It deals with issues of accommodation
and
9 smoking regulation on a worldwide basis.
10 Q. What do you remember Dr. Carchman ever
11 telling you about tobacco and health, one way or
the
12 other?
13 A. Specific conversations I can't quote
14 verbatim.
15 Q. Not verbatim.
16 A. Basically, that in general that while
smoking
17 might be a risk factor, there has been no
scientific
18 evidence, there's been no animal tests, there have
been
19 no inhalation tests that prove that smoking is a
cause
20 of disease.
21 Q. And what has Dr. Houtton told you on
that
22 subject?
23 A. Virtually the same thing.
24 Q. So when you say that's your view, is
that a
25 view that you've gained pretty much from Carchman
and

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1 Houtton?
2 A. I think it's a view that I've developed
over
3 the years, based on feedback I've heard from other
4 executives whose opinions I respect at Philip
Morris.
5 It certainly is an opinion that comes of
discussion and
6 reading on my own.
7 Q. Are you aware of any safer cigarettes
that
8 have ever been developed, but which have not been
9 marketed?
10 A. I don't know.
11 MR. ROSENBLATT: Page 204, line 4.
12 Q. Tell me everything you know about Philip
13 Morris Magazine.
14 A. It was a magazine that was conceived
several

15 years ago to -- and was based on editorial
content,
16 et cetera, that would be of interest to smokers
that
17 were on Philip Morris database. It was published
on I
18 believe a bimonthly basis, containing all kinds of
19 various editorials, information, facts that might
be of
20 benefit to smokers, like places that accommodate,
21 hotels, restaurants, had food articles, had -- it
was
22 pretty much a general interest-type of magazine
that
23 was mailed to several million people on a regular
basis
24 for several years.

25 Q. Everyone in your database?
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1 A. Not everyone, no.
2 Q. By several million people?
3 A. To the best of my knowledge, yes.
Several
4 million people got it.
5 Q. Free?
6 A. Yes.
7 Q. This was a weekly?
8 A. No, bimonthly.
9 Q. Twice a month?
10 A. No. Six times a year.
11 Q. I see. Who was the editor of it?
12 A. Most recently, Cheryl Wechsler was the
13 editor.
14 Q. And Philip Morris Magazine existed from
when
15 to when?
16 A. It ceased to exist about two or two and
a
17 half years ago. It published for anywhere from
three
18 to five years.
19 Q. Did you have any input into the decision
to
20 discontinue publishing it?
21 A. No.
22 Q. Why was it discontinued?
23 A. I would have to assume it just didn't
make
24 business sense to continue to publish it. I
really
25 don't know. I was not involved in the decision.
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1 MR. ROSENBLATT: Page 208, Line 8.
2 Q. When Philip Morris sells cigarettes in
3 countries other than the United States, are they
4 required to put warnings on their packages?
5 A. Depends on the guidelines and

regulations

6 within the country.

7 Q. In any country that does not require
8 warnings, are there warnings voluntarily put on
9 cigarettes by Philip Morris?

10 A. I don't know the answer to that.

11 MR. ROSENBLATT: Page 212, Line 21.

12 Q. Has Philip Morris ever had any other
13 publication other than Philip Morris Magazine?

14 A. We sent out mailings to people on our
15 database, something called Smokers' Caucus and

Smokers'

16 Alert, that deal with legislative issues that are

of

17 interest to people who smoke that want to protect

their

18 rights.

19 Q. Are these publications still ongoing?

20 A. Yes, they are.

21 Q. Smokers' Caucus did you say is one
22 publication, Smokers' Alert is another

publication?

23 A. That's correct. Smokers' Caucus is

mailed to

24 about one million people on a somewhat frequent if

not

25 regular basis; and Smokers' Alert is mailed to a

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1 smaller group of people when there is a specific

issue.

2 Q. How many get Smokers' Alert?

3 A. It could vary. 12,000, 15,000. It

depends

4 on the state or the issue.

5 Q. I have a lot of questions here about the
6 Council for Tobacco Research.

7 A. You better get someone else to answer

them.

8 Q. There's no point in my asking them of

you and

9 certainly no point in my asking you about special
10 projects?

11 A. I've never heard of special projects.

12 Q. Have you ever heard of the Council for
13 Tobacco Research before you read the Wall Street
14 Journal article that we talked about earlier?

15 A. I don't think so.

16 Q. To your knowledge is anyone doing

research in

17 the tobacco industry, Philip Morris or anyone in

the

18 tobacco industry, to prove or disprove whether

smoking

19 causes cancer and other diseases?

20 A. I don't know the answer to that.

21 Q. Have you ever testified before political
22 bodies?

23 A. No.

24 Q. Congress, state legislatures?

25 A. No.

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1 Q. You've never been personally involved in
2 that?
3 A. No, I have not.
4 Q. Are you Philip Morris' chief liaison
with the
5 Tobacco Institute?
6 A. I'm certainly one of the chief liaisons
with
7 the tobacco industry.
8 MR. ROSENBLATT: And then go to --
9 A. The institute, I'm sorry.
10 MR. ROSENBLATT: And that's the end of
this,
11 Judge.
12 THE COURT: Thank you, ma'am.
13 Okay. I guess we have to have a little
14 discussion as to what we're going to do.
15 (Discussion off the record.)
16 THE COURT: Let's give you folks a short
17 break while we do some talking.
18 (The jurors exited the courtroom.)
19 THE COURT: Okay. There are three more
20 depositions here that I've got. Each one presents
its
21 own unique problem.
22 MR. HEIM: Which ones do you have there,
23 Judge?
24 THE COURT: I have Rosenbaum, Orlowsky
and
25 Fulford. At least two of them, if not three of
them,

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1 relate to Liggett.
2 MS. LUTHER: Fulford, Judge, you do not
have
3 a completely color-coded copy of the deposition.
I
4 started to do it last night and it got so insane
with
5 my -- plaintiffs' designations, my objections to
the
6 plaintiffs' designations, the co-defendants'
objections
7 to the plaintiffs' designations, the
co-defendants'
8 designations, my designations, then the
plaintiffs'
9 crossdesignations, I lost my mind.
10 THE COURT: Welcome to the club.
11 MS. LUTHER: The best way to do it would
be
12 just to argue it verbally, and I gave you a chart
with
13 everything on it.
14 THE COURT: And that's even worse,
because I

15 can't go back and forth page by page. So that's a
16 problem.
17 MR. ROSS: Just to complicate matters
worse,
18 Orlowsky -- this is fairly brief -- they did some
very
19 late additional designations, so we have a few
more
20 objections.
21 THE COURT: Just a couple.
22 MR. ROSS: Just a couple. But I wanted
to go
23 ahead and file these, which we hadn't filed.
24 THE COURT: If the pink is the late
25 designation. So there really isn't that much.
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1 MR. ROSS: That's true.
2 THE COURT: I don't have much of a
problem
3 with any of that. Orlowsky was with --
4 MS. LUTHER: Probably Lorillard, Judge.
5 THE COURT: Let's see. Is he Lorillard?
6 MR. ROSS: Orlowsky was basically the VP
of
7 marketing.
8 THE COURT: Lorillard. Okay.
9 The problem with the Liggett people is
10 getting back into this issue of putting the
addiction
11 warning on the label. That to me is --
12 MR. ROSENBLATT: Just to remind you,
with
13 respect to LeBow's testimony, you did not allow me
to
14 introduce the pack with the warning, with the
actual
15 warning. You did allow him to testify that, yes,
16 there's a warning on all his cigarettes which
says:
17 Warning: Smoking is addictive.
18 THE COURT: I know. That's what bothers
me.
19 I don't know how far over the line we were, if we
went
20 over the line at all.
21 MR. ROSENBLATT: One CEO admits that the
22 product is addictive. All the other CEOs deny it.
23 THE COURT: That's one thing, but to put
it
24 on the label and put the label on the packet, then
you
25 start talking about the federal preemptions and
all

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20259
1 that sort of thing.
2 MR. MOSS: Judge --
3 THE COURT: I know what your argument

was.
4 MR. ROSENBLATT: You found an exquisite
5 balance in LeBow's testimony. You kept out the
pack
6 and allowed him to testify.
7 MS. LUTHER: To a certain extent, Judge,
8 Fulford's testimony is really cumulative of what's
9 already in the record of what LeBow said.
10 MR. HEIM: Yes. What's in there is in
there.
11 I actually don't recall whether LeBow said that
the
12 warning is on the pack.
13 MR. ROSENBLATT: He did. I reviewed
that.
14 THE COURT: I want to ask you folks to
do me
15 a favor.
16 MS. LUTHER: I recall that.
17 THE COURT: Can somebody pull LeBow's
18 testimony?
19 MR. HEIM: On that point?
20 MS. LUTHER: I have it back at the
office.
21 THE COURT: I mean the whole thing.
Didn't
22 take that long.
23 MR. HEIM: Chris can find it. We'll get
it
24 for you.
25 MR. ROSENBLATT: I don't have it with
me, but
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1 I had occasion to review it recently and I can
2 represent to the Court that testimony is in, that
--
3 THE COURT: I know it's in.
4 You get these terrible boughts with
5 hindsight. I just didn't want to get into that
area
6 too deeply through other people if it wasn't
really
7 necessary.
8 MR. ROSENBLATT: You know, it was hard
not
9 to, Judge. You remember part of the cross was:
Well,
10 you know, like these aren't really your honest
11 opinions; you're obligated to say this under the
12 settlement agreements.
13 THE COURT: It was tied in with the
fraud
14 count. Depending on where the Supreme Court goes
with
15 that, that's another story.
16 MR. HEIM: We'll pull it and look at it.
17 THE COURT: Let's set the Fulford thing
18 aside.
19 Rosenbaum.
20 MS. LUTHER: Rosenbaum is a director and

time. 21 officer of Brooke Group, at least he was at the
him 22 THE COURT: Have the same problem with
know 23 when it comes to that sort of question. I don't
24 what to do with it.

most 25 MR. ROSENBLATT: It probably makes the

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to 1 sense, in view of what Kelly has said, you know,
what 2 just go through it and forget who is designating
that. 3 and just make your --
4 THE COURT: I'm not concerned about
5 That doesn't really bother me. It's repeated
6 references to the warning labels in addition to
what 7 the Federal Government has mandated.
8 See, if that's error and that's not
something 9 that can slide by easily, I don't want to say that
it 10 is fundamental and I don't want to say that it is
11 insurmountable. But if it is error, to have LeBow
even 12 talk about it, why compound it?
13 MR. REID: We also had some objections
to 14 Rosenbaum. I think you've had a chance to look at
15 them.
16 THE COURT: I've looked at them. But
17 sometimes just by looking at the words, the
objections 18 don't mean much until I understand why you're
making 19 these objections.
20 MR. HEIM: Maybe we should do Orlowsky,
21 Judge, because he doesn't have these issues.
22 THE COURT: I've done Orlowsky. I could
do 23 it right now. I don't have a problem. It's the
other 24 two that really bother me. So I'm going to set
the 25 Fulford thing aside and Rosenbaum aside.

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can. I 1 If you want to go through Orlowsky, I
2 mean, there wasn't much to it.
3 MR. ROSS: Just so you know, Your Honor,
what 4 I just filed is what we objected to, all the new
5 designations.
6 THE COURT: All the what?

late 7 MR. ROSS: We have objected to the very
8 designations that just came in, the pink ones.
and I 9 THE COURT: But when I pick up a depo
10 see: Question: State your name please, and an
11 objection raised, I worry.
12 MR. ROSS: Not on this one.
13 THE COURT: Yes.
14 MR. ROSS: No. We didn't object to
that.
15 THE COURT: Sure you did. You've got
orange
16 next to it.
17 MR. ROSS: Not on my copy it's not.
18 THE COURT: The one that I'm working
with. I
19 mean, it's funny.
20 MR. ROSS: We'll have to pick up where
Bob
21 said. We'll have to fire that person. There's
22 something wrong because we clearly didn't object
to
23 that.
24 MR. REID: You didn't sustain it, in any
25 event.

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20263
1 THE COURT: For example: What is your
2 business occupation? Objection.
3 MR. ROSS: Something is wrong.
4 THE COURT: I had the impression that if
you
5 were going to object right off the bat, you didn't
want
6 any of his testimony in for some reason.
7 MR. ROSS: Maybe I better take a look at
8 that. Apparently we've got the wrong color.
That's
9 clearly got orange and it's clearly wrong.
10 So I have --
11 THE COURT: Okay. Let's talk about Page
4,
12 Line 7 through 9, overruled.
13 15 through 18, overruled.
14 MR. ROSS: Hold on. You already got
ahead of
15 me, because I hadn't even sat down.
16 Page 4.
17 THE COURT: Page 4, 7 through 9.
18 MR. ROSS: Okay. Well, that wasn't
objected
19 to.
20 THE COURT: Overruled.
21 15 through 18, overruled.
22 And on Page 5, 1 through 3, overruled.
23 MR. ROSS: That wasn't objected to
either.
24 THE COURT: I know.
25 Page 6, Lines 2 and 3, overruled.
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1 Page 6, 17 through 25, overruled.
 2 MR. ROSS: Yours is clearly all wrong
 because 3 none of this was objected to.
 4 THE COURT: Page 7, 1 through 11,
 overruled. 5 Then we skip from there to Page --
 6 MR. ROSS: First objection is on Page
 16, 7 first actual objection.
 8 THE COURT: Page 16 --
 9 MR. ROSS: Line 14.
 10 THE COURT: Line 14. And I overruled
 that 11 objection.
 12 And Page 17, overruled, 7 through 25.
 13 And 18, Lines 1, 2, 3 and 4, overruled.
 14 I think you should have put in Lines 5
 15 through 8, although it wasn't marked, to make
 sense out 16 of the answer.
 17 MR. ROSS: Okay.
 18 THE COURT: So on Page 18, lines will
 read 19 from 1 through 8.
 20 Line 19, 12 through 25, overruled.
 21 Page 20, Lines 1 through 18, overruled.
 22 Page 21, 1 through 4, overruled.
 23 And 17 and 18 overruled.
 24 MR. ROSS: 16 is missing there on 21,
 because 25 what they designated was an answer without a
 question.

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20265

1 THE COURT: You're right. Who is the
 2 immediate supervisor? So 16, 17 and 18.
 3 Page 22, Lines 1 through 25, overruled.
 4 23, Lines 1 through 10, overruled.
 5 Let me go back again.
 6 MR. ROSS: He's got all these questions
 about 7 what are all these other people --
 8 THE COURT: 1 through 8 is overruled.
 9 9 and 10 is sustained.
 10 The reason I did that is because further
 down 11 I sustained the objection as to Stevens and as to
 12 Spears.
 13 On Page 23, Lines 9, 10, 19, 20, 21, 24
 and 14 25 are sustained.
 15 Page 24, Lines 20 through 25, Spears at
 that 16 time was an attorney?
 17 MR. ROSS: No. Spears, at the time of
 this 18 deposition, would have been the chief operating

in 19 officer. He would have been the number two person
20 the company.
21 THE COURT: So I let that in, 20 through
25, 22 because it was general. Page 25, Line 1.
23 Then I believe we skipped Page 30.
24 Question on Line 24 and 25 is all right,
25 overruled.

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1 31, 1 through 15, overruled.
2 16 through 20, sustained.
3 MR. ROSS: We're on 31?
4 THE COURT: Yes. 21 through 25,
overruled.
5 Page 32, Line 1, overruled.
6 32, Lines 10 through 22, overruled.
7 Page 33, Line 16 through 18, sustained.
8 Page 36, Line 11 through 25, overruled.
9 Page 37, 1 through 23, overruled.
10 Page 41, 23 through 25, overruled.
11 42, 1 through 9, overruled.
12 Page 46, 23, 24, 25 are overruled.
13 And 47, 1 through 9, overruled.
14 Then I think we skip to 62. That's
where I 15 got my first pink.
16 MR. ROSS: Yes.
17 THE COURT: I sustained the objection,
Line 18 20 through 24.
19 Then there's one on 25 in blue.
20 MR. ROSS: That was a crossdesignation.
21 THE COURT: And 63.
22 MR. ROSS: That was our designation, our
23 original crossdesignation. But that was
contingent 24 upon --
25 THE COURT: I was looking at this thing
--

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1 let me see where I'm going with it -- because
there's 2 another designation for plaintiff on Page 63, Line
11. 3 MR. ROSS: The two pink are what they
just 4 added. Of course, one of our objections was all
these 5 were supposed to have been done back in June.
6 THE COURT: I'm sorry?
7 MR. ROSS: I said one of our objections
was 8 all of these were supposed to be done back in
June. We 9 just got these two days ago, the pink.
10 THE COURT: Well, it's really not the

issue
11 here.
12 So I excluded Page 62, 20 through 25,
and 63,
13 1 through 18.
14 Page 65 --
15 MR. ROSS: The part that was blue was
our
16 original designation, and there was no objection
raised
17 to that. That was 25 on 62.
18 THE COURT: Fine. You want to put Line
25
19 through Line 10 on Page 63 in?
20 MR. ROSS: As long as youth marketing
has
21 been allowed in the case, that's why we designated
it.
22 THE COURT: Youth marketsing is not the
same
23 as them actually selling cigarettes to a minor.
The
24 question initially was: How does Lorillard make
sure
25 that miners don't purchase cigarettes?
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20268
in,
1 MR. ROSENBLATT: If their designation is
2 that should certainly be in.
3 THE COURT: Then you want to get to the
4 selling of the cigarettes to miners, which is
another
5 step removed.
6 MR. ROSS: I don't have a problem if you
take
7 the whole thing out.
8 THE COURT: That's what I did; I took
the
9 whole thing out.
10 64, 4 through 22 is overruled, and the
11 designation on 23 and 24 is allowed.
12 68, 11 through 14, overruled.
13 18 through 22, overruled.
14 23 through 25, sustained.
15 Page 69, Line 1, sustained.
16 Question should start on Line 4 for the
17 answer on Line 8. So 4 through 8 would be
overruled.
18 Lines 12 through 19, sustained.
19 20 through 25, overruled.
20 70, Lines 1 and 2, overruled.
21 12 through 17, overruled.
22 72, 17 through 25, overruled.
23 73, 1 through 12, overruled.
24 Page 76, 20 through 25, overruled.
25 77, 1 through 8, overruled.
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here 1 78, now we get into this little issue
2 about Surgeon General.
3 MR. ROSS: Obviously our position here
is 4 it's just full of hearsay.
5 THE COURT: Well, I questioned the whole
6 thing, frankly.
7 MR. ROSS: Remember, this isn't a
scientist 8 or anybody else. This is somebody in marketing.
9 Clearly it would be hearsay.
10 THE COURT: I sustained the objections
on 11 Lines 20 through 25 on 78, all of 79 and 80;
although 12 there was one question they threw in the middle of
it 13 on 79, Lines 3 through 5, which doesn't relate to
the 14 issue of the Surgeon General. So it's sort of
like in 15 the middle. So I allowed that question.
16 MR. ROSS: So 3 through 5 is in?
17 THE COURT: On 79, yes.
18 Then we're on Page 80, Line 21 through
25, is 19 all right.
20 81, 1 through 10 is all right.
21 And 11 through 25 is sustained, as is 1
22 through 6 on Page 82.
23 83, Lines 1 through 7, sustained.
24 17 through 25, sustained.
25 84, that page sustained.
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20270
1 85, Lines 1 through 3, sustained.
2 4 through 20, overruled.
3 88, we get to ETS here now.
4 MR. ROSS: This is directly ETS. Of
course, 5 this was a Broin deposition.
6 THE COURT: Yes, I realize that.
7 I sustained the objections to Page 88,
Lines 8 9 through 25, and 1 through 4. And allowed 5
through 9 25 over objection.
10 92, 5 through 13 -- actually, 5 through
14, 11 is sustained.
12 97, I looked at it, questioned it, said,
13 well, for whatever value it may have, I let it in,
3 14 through 9.
15 And Page 98, 1 through 7.
16 99, excluding 2 through 22.
17 23 through 25 is overruled.
18 And Page 100, 1 through 6 is overruled.
19 MR. ROSS: You got ahead of me. 100 --
20 THE COURT: Page 100, 1 through 6 is

21 overruled.
22 7 through 17, sustained.
23 101, 6 through 20, overruled.
24 106, it's got sort of a repetitious
question
25 here.

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20271
1 MR. ROSS: Yes. Same questions we left
in.
2 THE COURT: But they threw in ethnic
groups
3 here. The answer is a little bit more detailed.
So I
4 allowed it in.
5 And then they added 13 through 23.
6 MR. ROSS: Yes.
7 THE COURT: And you object to that?
8 MR. ROSS: Yes.
9 THE COURT: Why?
10 MR. ROSS: We object to the whole line
of
11 questioning because we don't think it's relevant.
It
12 is also cumulative. But you left it in before.
13 THE COURT: Overruled.
14 I have a blue designation on 107, Lines
9
15 through 20.
16 MR. ROSS: That's our crossdesignation.
17 THE COURT: I'll allow it.
18 Page 108, Lines 7 through 15, overrule
the
19 objection.
20 109, 20 through 25, for whatever value,
I
21 allowed it.
22 110, 1 through 25, overrule the
objection.
23 Page 111, Lines 1 through 4, overruled.
24 114, Lines 1 through 14, sustained.
25 118, this one I excluded, sustained the

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20272
1 objection, 2 through 18.
2 Page 119, 23 through 25, sustained.
3 The whole Page 120, sustained.
4 Page 121, 1 through 13, sustained.
5 122, 14 through 25, overruled.
6 And I'm missing Page 123, but I don't
think
7 there's anything on it.
8 MR. ROSS: Yes, there is.
9 THE COURT: Can I take a look at that
page?
10 I think that's the only page. That's the last of
it?
11 MR. ROSS: Yes, that is the last page.
I

12 have just a minuscrypt.
13 THE COURT: I'll allow that in, 1
through 21 on 123.
14
15 MR. ROSS: That's it. You can have
that.
16 That's an extra copy.
17 THE COURT: Okay. We'll take five.
18 MR. ROSENBLATT: But that's not going to
take
19 very long.
20 THE COURT: I'm doing the best I can for
you.
21 MR. ROSENBLATT: And I've got some
documents,
22 depending upon what you want to do.
23 THE COURT: Depending what you want to
do.
24 If you're going to read three or four page
documents
25 that are only snippets, it may be one thing, but
whole

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1 documents --
2 MR. ROSENBLATT: I have a few documents.
3 THE COURT: I'm sure Mr. Moss has
something
4 to say about that.
5 MR. ROSENBLATT: But he said it already.
6 MR. MOSS: What I said was right before
we
7 left I asked to discuss it and I asked everyone to
8 think about it, so I didn't say it all.
9 MR. HEIM: Today.
10 MR. ROSENBLATT: Today. Thanks, Bob.
11 THE COURT: We'll take five.
12 (A brief recess was taken.)
13 MR. ROSENBLATT: I have a little bit of
a
14 suggestion, Judge, because this is probably
getting
15 pretty confusing to the jury, so you might want to
tell
16 them what -- I mean, you've told them --
17 THE COURT: Tell them what?
18 MR. ROSENBLATT: What's going on, the
breaks.
19 THE COURT: What is going on?
20 MR. ROSENBLATT: Basically, from our
21 standpoint, you need to --
22 THE COURT: Going over the --
23 MR. ROSENBLATT: That process
frequently. In
24 other words, I want to introduce depositions;
there are
25 objections; there's a discussion; you've got to
rule on

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reading 1 them, and that process can take longer than
some 2 what you've decided to allow in. So it gives them
3 kind of understanding.
that. 4 THE COURT: I think they understand
5 MR. ROSENBLATT: I'm sure they do.
6 MR. HEIM: My concern about how that
might be 7 said is it looks like we're somehow impeding them.
8 THE COURT: Obstructionist.
9 MR. HEIM: I don't mind, as long as you
say 10 that these are things that ordinarily should have
been 11 done before the trial started, but because the
12 plaintiffs are disorganized, they didn't get
around to 13 it. If you add that, that's okay.
14 MR. ROSENBLATT: That's fine, as long as
you 15 add the following: If you're confused about who's
16 the -- which side is the obstructionist in this
case, 17 count the number of sidebars and count the number
that 18 were asked for by the plaintiffs.
19 MR. REID: That means who's causing them
to 20 happen. We agree with that, based on who's
causing 21 them to happen.
22 THE COURT: Okay. Has everybody vented?
23 Good.
24 We will do Martin Orlowsky, which
shouldn't 25 take too long. Then we've got to decide whether
we're

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or 1 going to do another depo or read some testimony,
2 some exhibits.
3 Let me ask you a question. After these
4 depositions, the ones that I have that we haven't
done 5 yet, the Rosenbaum and the Fulford thing, what
else is 6 there?
7 MR. ROSENBLATT: Funny you should ask,
Judge. 8 Arthur J. Stevens I have for you.
9 THE COURT: Goody. Another 300-page
one. 10 MR. ROSENBLATT: And I have Dr. John
Holbrook 11 for you, but we have greatly reduced our
designations 12 so as to pretty much limit him to his experiences

with
13 the tobacco industry.
14 I've got a listing here which shows you
that
15 about 15 percent of what we originally designated,
16 we're still designating with respect to Holbrook.
So
17 I've got that.
18 I've got the Holbrook deposition and the
19 Stevens deposition. I'm always reluctant to hand
these
20 to you as your overnight assignment.
21 THE COURT: I gave up homework when I
got out
22 of high school.
23 MR. ROSENBLATT: And Spears is coming
later.
24 THE COURT: Spears is coming when?
25 MR. ROSENBLATT: Later, either later
today --

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1 yes, later today, Spears, who is the CEO of
Lorillard.
2 THE COURT: And when you finish with
those
3 three?
4 MR. ROSENBLATT: We're waiting for
responses.
5 Dr. Harmon McAllister, who is with the Council for
6 Tobacco Research; Kornegay of the Tobacco
Institute;
7 Edward Horrigan, who was the CEO of Liggett,
formerly
8 the CEO of Reynolds; Thomas Houston, Dr. Thomas
9 Houston. And then we're considering discussing or
10 reading excerpts from several defense experts.
11 We're getting there, Judge. We're
getting
12 there. We really are.
13 THE COURT: Okay.
14 MR. MOSS: Our silence on the last
category
15 should not be taken as any type of acceptance.
There
16 are some rules that we have here, so I don't know
what
17 he's talking about. I guess when we see it, we
can
18 take it up. But I don't want Your Honor to think
that
19 by our -- I guess you don't think that anymore.
20 THE COURT: Never did.
21 MR. REID: We had also asked about the
list
22 for Friday.
23 THE COURT: What's going to happen
Friday?
24 MR. ROSENBLATT: Susan said that she
faxed
25 something.

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1 MS. LUTHER: Something was faxed to my
2 office. I haven't seen it, though.
3 THE COURT: That would be the list of
items
4 that you want to take up?
5 MR. ROSENBLATT: For Friday.
6 THE COURT: Let me have these wonderful
7 things.
8 MR. ROSENBLATT: They're thick, but
they're
9 not all that much that we would be reading.
10 (Discussion off the record.)
11 MR. ROSS: Judge, Stevens, we have to
make
12 sure you have a copy of our objections, because
that
13 was the first notice we got of it. And also on
14 Holbrook, they changed their designations.
15 THE COURT: You're telling me that this
thing
16 is not marked up now?
17 MR. ROSS: I have no idea. We filed
18 objections. I just don't know if you have a copy,
the
19 explanation of the objections.
20 THE COURT: I don't see it here.
21 How did you mark these? This is not
colored.
22 MR. ROSS: We'll have to get you
23 color-coding.
24 THE COURT: I have black stripes.
25 MR. ROSS: That's not going to help.
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1 THE COURT: That's obviously a Xerox
copy.
2 The other one is color-coded. The one that's
Holbrook
3 you better check.
4 MS. BERGER: That is the reduced
version.
5 MR. ROSENBLATT: Very reduced.
6 THE COURT: But when I see things that
are on
7 here, I can't tell, because it's not color-coded;
it's
8 just a black line; for example, my Page 120, which
I
9 just opened it up to.
10 MR. ROSENBLATT: Page 20.
11 THE COURT: 120.
12 MR. ROSS: Judge, as we understand what
13 they've done here, they've only designated pages
--
14 MR. ROSENBLATT: That's not marked.
Only
15 what's in yellow here is what's designated from

16 Holbrook. That's few pages.
17 THE COURT: Well, I don't see any yellow
in
18 this whole thing. Let's see. Your pages are
different
19 numbered because you start with Page 7808 and I
don't.
20 So you're talking about a trial transcript. My
depo
21 pages start with one.
22 MS. BERGER: The beginning starts with
Broin
23 trial testimony. This is the second page. Flip
to the
24 second page. That's this depo. And then this is
what
25 I just handed you.
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on
1 THE COURT: So all you're reading starts
2 Page 151?
3 MS. BERGER: Correct. It is marked.
4 THE COURT: Okay. There's very little
of it.
5 We could do that in two seconds. Okay. That's
good.
6 That takes care of that one.
7 MR. ROSS: Judge, just so you
understand,
8 what they've done on Holbrook, apparently they
want to
9 read his credentials from the Broin transcript,
then
10 they want to read some stuff on Page 151 to 168.
11 THE COURT: They didn't have the
credentials
12 in the depo?
13 MR. ROSS: I don't know why they've done
it
14 that way.
15 THE COURT: Nobody asked them?
16 MR. ROSS: But we objected to the entire
17 designation at this point. You'll see, when you
look
18 at what they designated, that they claim they just
want
19 to ask him about some personal experiences.
20 You're going to find it all
objectionable,
21 I'm quite confident, because he doesn't remember
any of
22 them.
23 But even if it were not objectionable,
if
24 that were true, then we would object to 20 pages
of his
25 corrections from the Broin transcript, because
what's

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as an
as? A
but
nearly
about
anticipating
business,
testimony
industry.
at
written
bringing
to
about
well

1 designated, apparently he's not being designated
2 expert in anything.
3 THE COURT: What is he being presented
4 CEO?
5 MR. ROSENBLATT: No, no. This is a
6 physician, Dr. Holbrook. No, he's a physician,
7 he's talking about -- he's been involved with
8 all the Surgeon General's Reports. He's written
9 tobacco and addiction.
10 THE COURT: You listed him as an expert?
11 MR. ROSENBLATT: Correct. But
12 the argument about cumulative and all that
13 we've basically limited the substance of his
14 to his personal involvement with the tobacco
15 THE COURT: All right. I'll take a look
16 it.
17 I don't have your objections, your
18 objections?
19 MR. ROSS: We didn't know he was
20 those over today, so we've got to get those over
21 you.
22 MR. ROSENBLATT: And here is a copy of a
23 letter, Judge, that we sent to defense counsel
24 the testimony of Dr. Holbrook, so you might as
25 have it along with the depo.
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with
We'll
deposition.
of
York
play

1 THE COURT: I have a mini-transcript.
2 Then I guess we can go ahead and proceed
3 Orlowsky.
4 Let's get the jury out.
5 (The jurors entered the courtroom.)
6 THE COURT: Okay. Have a seat, folks.
7 get under way.
8 We are now going to do another
9 MR. ROSENBLATT: This is the testimony
10 Martin Orlowsky, O-R-L-O-W-S-K-Y, taken in New
11 City, October 16, 1993. And Mr. Hoag is going to

12 Mr. Orlowsky.
13 Page 4.
14 (The deposition of Martin Orlowsky was
read
15 as follows:)
16 Q. State your name, please.
17 A. Martin L. Orlowsky.
18 MR. ROSENBLATT: Going to Line 15.
19 Q. What is your business or occupation?
20 A. I'm employed by Lorillard Tobacco
Company.
21 Q. In what capacity?
22 A. I'm executive vice-president of
marketing.
23 Q. How long have you occupied that post?
24 A. Approximately three to four months.
25 Q. What did you do prior to that time?
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1 A. I was senior vice-president of
advertising
2 and brand management for Lorillard Tobacco
Company.
3 Q. And how long did you have that job?
4 A. About two and a half years.
5 Q. How long have you been with Lorillard
all
6 together?
7 A. It will be three years this month.
8 MR. ROSENBLATT: Page 6, Line 2.
9 Q. What did you do before that?
10 A. I worked for Nabisco Brands, part of RJR
11 Nabisco.
12 MR. ROSENBLATT: Going down to Line 17.
13 Q. Before that?
14 A. Before that I was employed by RJ
Reynolds
15 Tobacco Company.
16 Q. Doing what?
17 A. My last position there was executive
18 vice-president, marketing and sales.
19 Q. How long did you work at RJ Reynolds all
20 together?
21 A. RJ Reynolds Tobacco Company?
22 Q. Yes.
23 A. Nine years.
24 Q. And what different positions did you
hold
25 there during those nine years?
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1 A. I was executive vice-president of
marketing
2 and sales; I was senior vice-president of
marketing; I
3 was vice-president of marketing; I was director of
4 marketing services; and I was media director.
5 Q. What did you do before RJ Reynolds?
6 A. I worked for an advertising agency.

14. 7 MR. ROSENBLATT: We go to Page 16, Line
8 Q. Specifically, does cigarette smoking
cause 9 disease?
10 A. No, I do not believe that.
11 Q. Based on what?
12 A. Based on what I've heard, read and seen.
13 Q. Have you read any of the Surgeon
General's 14 Reports on smoking and health?
15 A. I don't think I've read them in depth,
no. 16 Q. Have you read any of the literature put
out 17 by the American Cancer Society, the American Lung
18 Association, the American Heart Association?
19 A. It's possible.
20 MR. ROSENBLATT: And then continue your
21 answer on Line 7, Page 17.
22 A. At some point in time.
23 Q. What information do you have which
causes you 24 to discount all that information?
25 A. What I've read and seen or heard, I have
yet

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any -- 1 to see anything that states clearly that there's
2 that smoking causes any disease.
3 Q. Well, isn't it true that on Lorillard
4 cigarettes there's a warning label that says:
Smoking 5 causes cancer?
6 A. There's a warning label on the
cigarettes, 7 yes.
8 Q. It's not true?
9 A. It is a statement that we apply on the
10 packaging by virtue of legislation.
11 Q. But you think personally that it's
12 misinformation?
13 A. As I said, I don't think smoking causes
14 disease in my personal view.
15 Q. You don't think it causes -- not only
don't 16 you think it doesn't cause cancer, you think it
doesn't 17 cause heart disease, you also think it doesn't
cause 18 any disease?
19 A. That's correct.
20 Q. Based on what?
21 A. As I said, information I've read, heard
and 22 seen. I've yet to see anything that states that
it 23 does.
24 MR. ROSENBLATT: Page 19, Line 12.
25 Q. Can you tell me specifically what you've

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1 seen, read or heard?
2 A. I've read articles in the news media
3 regarding the issue. I've read at various points
in
4 time various overviews of those kinds of pieces of
5 information. I've seen broadcast media talking
about
6 the issue. I've heard politicians talk about the
7 issue. I've heard scientists talk about the
issue.
8 Various sources.
9 Q. I'll tell you what I'm looking for and
maybe
10 you can't answer it, but what I'm looking for is
for
11 you to tell me that some time in 1993 I read an
article
12 in the New York Times or in the New England
Journal of
13 Medicine by a specific individual, and I relied on
that
14 article.
15 A. I --
16 Q. All you've done so far is give me very
vague,
17 generalized stuff about the media.
18 Now maybe you don't have -- I'm looking
for
19 something specific. I read an article by such and
such
20 a doctor from such and such university?
21 A. I could not quote that.
22 Q. Not quote. I'm not interested in your
23 quoting. I'm just interested in knowing whether,
as
24 you sit here today, you can give me the specific
name
25 of an individual who has written such an article
or

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1 even a specific publication where you've read such
an
2 article other than, I've read stuff in the media?
3 A. I could not give you that specific of an
4 answer.
5 Q. Marketing --
6 MR. ROSENBLATT: That's Line 25, Page
20.
7 Q. Let's talk about marketing first. What
is
8 marketing in the tobacco industry?
9 A. Marketing is the advertising and
promotion of
10 cigarette products.
11 MR. ROSENBLATT: Line 16.
12 Q. Who is your immediate supervisor?

13 A. Andrew Tisch.
14 Q. How many other people at Lorillard are
at
15 your level?
16 A. Technically, there's no one at my level.
17 MR. ROSENBLATT: Page 22, Line 1.
18 Q. Who is?
19 A. There are other senior managers as
executive
20 vice-president. I'm the only executive
vice-president.
21 There are others that have comparable positions in
22 terms of various responsibilities.
23 Q. Who would they be, please?
24 A. There's a senior vice-president of
finance.
25 Q. What's his name?
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1 A. M.A. Peterson.
2 Q. Who else at that level?
3 A. There's chief counsel, general counsel,
4 Arthur Stevens.
5 Q. Who else at that level?
6 A. Head lawyer. There's Alex Spears, who
is --
7 he has the title of vice-chairman, chief operating
8 officer. He's essentially responsible for
operations.
9 Q. You mean operating the Lorillard Tobacco
10 Company?
11 A. No, the operating manufacturing and
12 production.
13 Q. Of cigarettes?
14 A. Yes.
15 Q. Is he based in New York?
16 A. No, he's not.
17 Q. Where is he based?
18 A. In Greensboro, North Carolina.
19 Q. Anyone else at the same level?
20 A. I hope I didn't leave anyone out. No.
21 Q. Are these people you just mentioned the
22 senior managers?
23 A. Yes. That's correct.
24 MR. ROSENBLATT: Page 24, Line 20.
25 Q. Have you ever had any kind of discussion
with

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1 Mr. Spears on the issue of tobacco and health?
2 A. Yes.
3 Q. To what extent?
4 A. General discussion.
5 Q. Superficial?
6 A. Pretty much.
7 MR. ROSENBLATT: And we go to Page 30,
Line
8 24.
9 Q. Are low tar and low nicotine cigarettes

less
10 dangerous to the health than other cigarettes?
11 A. As I've said before, I don't think that
12 there's any relationship to that question. I
don't
13 think that's an issue.
14 Q. You give that answer because you don't
think
15 that cigarettes, whether they're low tar and
nicotine
16 or high tar and nicotine -- because you don't
think
17 that cigarettes, whether they're low tar and
nicotine
18 or high tar and nicotine cause disease?
19 A. That's correct.
20 Q. But then what's the point of low tar and
21 nicotine cigarettes, I mean, does that change the
22 taste, or does it change the pleasure?
23 A. A lower tar product will have a
different
24 taste characteristic than a higher tar product.
25

MR. ROSENBLATT: Line 21.
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1 Q. Are cigarettes addictive?
2 A. I do not believe they are.
3 Q. Based on what?
4 A. My own personal experience.
5 Q. Anything beyond that?
6 A. That's about it.
7 MR. ROSENBLATT: Line 10.
8 Q. What is the Council for Tobacco
Research?
9 A. I believe it's a scientific research
10 organization.
11 Q. Have you ever read any of the scientific
12 research produced by the Council for Tobacco

Research?
13 A. No, I have not.
14 Q. Have you ever had any dealings with the
15 Council for Tobacco Research?
16 A. No, I have not.
17 Q. What is the special projects division of
the
18 Council for Tobacco Research?
19 A. I have no idea.
20 MR. ROSENBLATT: And we go to Page 36,

Line
21 11.
22 Q. What does research and development at
23 Lorillard consist of?
24 A. I'll need more specifics.
25 Q. You've got a department, what do they
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1 research, what do they develop?
2 A. They develop cigarette products and do
3 associated research.

4 Q. Research in the sense of ascertaining
whether
5 a particular product will sell well with the
public?
6 A. No.
7 Q. Research along the lines of whether the
8 product will taste good or give pleasure?
9 A. They do research related to taste, yes.
10 Q. Any other kind of research that you're
aware
11 of?
12 A. No.
13 Q. I mean, for example, is any research
done on
14 the issue of whether either cigarette smoking or
15 environmental tobacco smoke causes or contributes
to
16 causing disease?
17 A. I'm not aware of any.
18 Q. Do you have any connection with or
anything
19 to do with Lorillard Inc. as opposed to Lorillard
20 Tobacco Company?
21 A. No, I do not.
22 Q. Do you have any connection with Loews
23 Corporation?
24 A. No, I do not.
25 Q. Do you ever attend board meetings?
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1 A. No, I do not.
2 Q. When you were working at any advertising
3 agencies -- I know you did a lot of media stuff --
did
4 you ever have occasion to work with the talent on,
for
5 example, on a radio show where a cigarette company
was
6 the sponsor?
7 A. No, I did not.
8 MR. ROSENBLATT: Page 41, Line 23.
9 Q. What preparation, if any, did you do for
the
10 deposition that you're giving today?
11 A. I met with some lawyers.
12 Q. Which ones?
13 A. Mr. Hardy, Marty Warren and Jim Cherry
and
14 Jim Johnson.
15 Q. Once or more than once?
16 A. More than once.
17 Q. How many times?
18 A. Two or three times.
19 Q. And how long was each session about?
20 A. Couple hours.
21 MR. ROSENBLATT: Page 46, Line 23.
22 Q. When did it become prohibited for
tobacco
23 companies to advertise on radio and television?
24 A. I believe in 1971.
25 Q. And what were the circumstances of that?

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1 A. Technically?
2 Q. No, not technically at all.
3 A. I believe some legislation was passed
that
4 prevented the use of broadcast media.
5 Q. And that was in 1971?
6 A. I believe so.
7 Q. And that was federal legislation?
8 A. I believe so.
9 MR. ROSENBLATT: What's the next page,
does
10 anyone know?
11 MR. ROSS: 65.
12 MR. ROSENBLATT: 65, Page 65, Line 4.
13 Q. What is the Tobacco Institute?
14 A. It's a trade association.
15 Q. Have you ever had any dealings with the
16 Tobacco Institute?
17 A. Yes, I have.
18 Q. Tell me about those.
19 A. I briefly was a part of the
communications
20 committee of the Tobacco Institute.
21 Q. During what time frame?
22 A. In the years somewhere in the early
'80s.
23 Q. And what did you do in that position?
24 A. I was a part of a group that dealt with
25 different positions, different communications
positions

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1 as part of the Tobacco Institute.
2 Q. Does the Tobacco Institute provide
3 spokespersons when the New York Times or the Wall
4 Street Journal want a comment from a
representative of
5 the tobacco industry?
6 A. I guess so.
7 Q. You don't know?
8 A. Not literally, no.
9 MR. ROSENBLATT: Page 68, Line 11.
10 Q. Is it your impression that the
scientific
11 community in the United States of America is
divided on
12 the issue of cigarette smoking causing cancer and
other
13 diseases.
14 MR. ROSENBLATT: Line 18.
15 A. I have no idea what the status of the
16 scientific community is.
17 Q. You mean that literally, you have no
idea?
18 A. I have no idea as to what division of
the
19 scientific community there is on the issue.

20 Q. During the past five years --
21 MR. ROSS: That's out. 23 is out.
22 MR. ROSENBLATT: Page 69, Line 4.
23 Q. During the past five years, have you
read any
24 article unconnected with the tobacco industry that
25 states that smoking cigarettes does not cause
cancer

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1 and other diseases?
2 A. I don't recall if I have or haven't.
3 MR. ROSENBLATT: Going to Line 20.
4 Q. Does the Council for Tobacco Research
have a
5 Scientific Advisory Board to your knowledge?
6 A. Yes, I believe they do.
7 Q. Do you know who's on that board?
8 A. No, I do not.
9 Q. Do you know the qualifications of any
people
10 who are on that board?
11 A. No, I do not.
12 MR. ROSENBLATT: Line 12.
13 Q. How many Americans do you think have
quit
14 smoking in the last 10 years?
15 A. I have no idea.
16 Q. You don't know if it's three or 30
million?
17 A. I have no idea.
18 MR. ROSENBLATT: Page 72, Line 17.
19 Q. Do you consider Dr. Spears to be
20 authoritative on the question of whether cigarette
21 smoking causes cancer and other diseases?
22 A. I have no idea how authoritative he is.
23 Q. Do you consider anyone at Lorillard
Tobacco
24 Company to be authoritative on the question of
whether
25 cigarette smoking causes any disease?

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1 A. As I said, I'm not familiar with anyone
who
2 would have an opinion on that, no.
3 Q. Do you want to know whether cigarette
smoking
4 causes disease or is that information not really
5 relevant to you at this point in your career?
6 A. Do I want to know? I have no idea on
whether
7 I want to know or I don't want to know. It's not
a
8 fact; it's not an issue.
9 Q. It's not an issue to you?
10 A. That is correct.
11 Q. Okay.
12 A. I might add, since I don't believe that

13 cigarette smoking causes disease, it's not an
issue.
14 MR. ROSENBLATT: Page 76, Line 20.
15 Q. Have you ever met anyone, can you name a
16 single person that you've ever talked to,
unconnected
17 with the tobacco industry, who has stated publicly
that
18 cigarette smoking does not cause any disease?
19 A. I don't think so.
20 Q. Do you know whether such a statement
exists
21 anywhere in the medical literature in the last 10
22 years, where a doctor or a scientific person has
23 written down for publication his or her belief
that
24 cigarette smoking does not cause any disease?
25 A. I have no idea.
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1 MR. ROSENBLATT: Page 79, Line 3.
2 Q. Does Lorillard target women, children or
3 minority groups in its advertising?
4 A. No, it does not.
5 MR. ROSENBLATT: Page 80, Line 21.
6 Q. Well, is it your belief that tobacco use
is
7 not responsible for the premature deaths of less
than
8 one-half million people every year in this
country, or
9 is it your belief that tobacco use is not
responsible
10 for a single premature death?
11 A. As I said, I do not believe that tobacco
12 causes disease. Consequently, statistically,
whatever
13 you're quoting, I cannot respond to.
14 Q. Do you believe that a single heavy
smoker,
15 two packs a day for 20 years, has ever died from
lung
16 cancer as a result of smoking two packs a day for
20
17 years?
18 A. I have no idea. I do not believe it
causes
19 disease. Consequently, I have no response to
that.
20 MR. ROSENBLATT: Page 85, Line 4.
21 Q. Have you ever spoken to anyone in the
tobacco
22 industry, while you were with RJ Reynolds or now
with
23 Lorillard, who stated to you that he or she does
24 believe cigarette smoking causes disease?
25 A. I have not encountered anyone like that.
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20297

that 1 Q. And as I've understood your testimony,
2 if you were speaking to a group of children in an
3 elementary school and you were asked by the
children if 4 you thought it was a good idea for them to smoke
when 5 they became 18, your answer would be, that's an
6 individual decision which you will be qualified to
make 7 when you turn 18 and it's not for me to tell you
8 whether you should smoke or not smoke?

9 A. That is correct.

10 Q. Do you think that -- do you think that's
a 11 responsible position to take, an ethical position
to 12 take?

13 A. Yes, I do.

14 MR. ROSENBLATT: Page 89, Line 5.

15 Q. To your knowledge is Lorillard doing any
16 independent research on the issue of whether
cigarette 17 smoking causes cancer?

18 A. Not to my knowledge.

19 Q. To your knowledge is Lorillard Tobacco
20 Company doing any independent research on the
question 21 of whether environmental tobacco smoke causes or

22 contributes to causing cancer and other diseases?

23 A. Not to my knowledge.

24 Q. To your knowledge is any tobacco company
25 anywhere in the United States doing such research?

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1 A. Not to my knowledge.

2 Q. Will you agree that there are a certain
3 number of people over the years who are smokers,
who 4 have desperately wanted to stop smoking but were
unable 5 to stop smoking, do you agree that there are such
a 6 category of people?

7 A. I have no idea.

8 Q. Have you ever seen any document put out
by 9 the Council for Tobacco Research?

10 A. No, I have not.

11 MR. ROSENBLATT: The next page is 97,

Line 3.

12 Q. What would Lorillard do if, for example,
the 13 state legislature of New York, just to pick one
state, 14 was considering a ban on smoking in all
restaurants?

15 How would Lorillard go about fighting that kind of
16 legislation?

17 A. If Lorillard decided to deal with that
issue,

18 it would be through the Tobacco Institute.
19 MR. ROSENBLATT: Page 98, Line 2.
20 Q. You would agree that generically
Lorillard,
21 as well as every other tobacco company, is
certainly
22 against the banning of smoking in public
facilities?
23 A. Lorillard is in favor of allowing
smokers and
24 nonsmokers to have opportunities to exercise their
25 predilections.

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1 MR. ROSENBLATT: Page 99, Line 23.
2 Q. If legislation was proposed at the
federal
3 level to ban all cigarette advertising in all
magazines
4 and newspapers, would Lorillard oppose such
legislation
5 through the Tobacco Institute or through any other
6 entity?

7 A. I believe our position would be that
anything
8 that would infringe upon our Constitutional rights
to
9 market our products might be an issue that we
would
10 have some interest in.

11 MR. ROSENBLATT: Page 101, Line 6.

12 Q. When you say: We don't believe that
13 cigarettes cause disease, who is the generic "we"?

14 A. The company.

15 Q. Are you briefed in some fashion at
Lorillard
16 as to the official position of Lorillard on all
17 health-related issues such as banning smoking in
18 buildings?

19 A. We are made aware of the company's
viewpoint
20 on different issues.

21 Q. Through an inhouse organ?

22 A. No.

23 Q. Through what?

24 A. Through meetings or discussions.

25 Q. Who attends these meetings?

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1 A. It varies.

2 MR. ROSENBLATT: Page 106, Line 1.

3 Q. Well, are groups ever targeted such as
women,
4 young people, certain racial or ethnic groups?

5 A. We --

6 MR. ROSENBLATT: Let me repeat the
question.

7 I guess it's hard to play Mr. Orlowsky.

8 THE WITNESS: I think I'm getting a

cold, is
9 what's happening here.
10 MR. ROSS: Obviously, you're being nasty
to
11 my client.
12 MR. ROSENBLATT: Obviously.
13 Line 1, Page 106.
14 Q. Well, are groups ever targeted such as
women,
15 young people, certain racial or ethnic groups?
16 A. We don't target per se, but we do look
for
17 certain disproportionate segments of the smoker
18 population that might be more interested in
certain
19 types of products, yes. In those terms, yes.
20 Q. What have you found in that respect? I
mean,
21 can you give me an example of a particular kind of
22 group that would be particularly interested in a
23 certain kind of product?
24 A. Certain groups would prefer a product
that
25 want a fuller flavor tasting cigarette.
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20301
1 Q. What group did you find would be most
2 interested in a fuller flavor cigarette?
3 A. Male smokers.
4 Q. What do women seem to be most interested
in?
5 A. A lighter tasting cigarette.
6 Q. What about young people as opposed to
7 middle-aged people?
8 A. They tend to want -- younger adult
smokers
9 tend to be more interested in a fuller flavor-type
10 cigarette.
11 MR. ROSENBLATT: Page 107, Line 9.
12 Q. How do you address the issue in your
13 advertising of getting new smokers to start
smoking, to
14 replace all the smokers who have quit?
15 A. We do not advertise to nonsmokers.
16 Q. Are you telling me that all the
advertising
17 of Lorillard is for the purpose of getting
18 already-committed smokers to switch from Marlboro
or
19 other lines to your line?
20 A. That is correct.
21 Q. And Lorillard has no interest whatsoever
in
22 creating new smokers?
23 A. That is correct.
24 MR. ROSENBLATT: Page 108, Line 7.
25 Q. Do you have statistics on how many of
your

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1 cigarettes are sold to new smokers, people who
have
2 never smoked before and begin with a Lorillard
product,
3 as opposed to people who have switched from other
4 brands?
5 A. No, we do not.
6 Q. To the best of your knowledge are those
7 statistic -- those statistics do not exist
anywhere?
8 A. That is correct.
9 MR. ROSENBLATT: Page 109, Line 20.
10 Q. If I were to get -- collect magazines
where
11 Lorillard advertising has appeared in the last 10
years
12 and just looked at the people appearing in those
ads,
13 would you not think that 80 or 90 percent of the
people
14 would be under 40 that appeared in the ads?
15 A. A large percentage would be under 40,
yes.
16 Q. And that's by design, isn't it?
17 A. Not necessarily.
18 Q. Well, what are some of the motifs of
your
19 advertising for Lorillard?
20 A. Motifs?
21 Q. Themes?
22 A. Well, as I said earlier, we use Newport
23 Pleasure for Newport.
24 Q. But what do you show? Do you show two
people
25 on a sailboat or what?

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20303

1 A. We show two to three to four to ten
people
2 engaged in some sort of pleasurable activity.
3 Q. Like what?
4 A. Social interaction.
5 Q. On the beach?
6 A. Could be.
7 Q. At a party?
8 A. Could be.
9 Q. What's your thinking as to why that's
10 effective? What are you trying to communicate?
What
11 does that have to do with switching from Camel to
True?
12 A. Well, it's an alternative. If someone
feels
13 that this kind of cigarette product is appealing
versus
14 someone from the west, as the cowboy in Marlboro
15 advertising, or versus whatever else may be
advertised,
16 there's a difference there.
17 MR. ROSENBLATT: What's the next page?

18 MR. ROSS: 122.
19 MR. ROSENBLATT: Page 122, Line 14.
20 Q. Does Lorillard ever give out cigarettes
free
21 to the public, whether on street corners or at any
22 other locations?
23 A. We at times sample product, yes.
24 Q. And tell me about how you do that, how
you
25 sample products.

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20304
1 A. What do you mean how?
2 Q. How? Do you send a girl, a boy, a group
of
3 girls and boys to a street corner and hand out
4 cigarettes? How do you sample these products?
5 A. We have various -- we attend various
6 public-type functions where sampling is allowed,
and we
7 have male and female adults that provide product
to
8 interested people.
9 Q. What are some of these public functions
where
10 that is done?
11 A. I can't give you the specific names. I
don't
12 recall them. It might be a street festival or
county
13 fair or things like that.
14 Q. In that kind of circumstance, how does
15 Lorillard make sure that cigarettes aren't being
handed
16 out to miners?
17 A. We have a fairly strict set of
guidelines for
18 the people involved in this activity. They're
19 supervised and they ask for proof. There's a
20 segregated area, so that you have to make a
conscious
21 attempt to participate in the sampling activity.
We do
22 as much as we can to ensure that those that are
not
23 lawfully eligible to receive product and who are
not
24 interested technically in receiving product as
well do
25 not get it.

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20305
1 MR. ROSENBLATT: That's it from this
2 deposition, Judge.
3 THE COURT: Okay. Now we have to go
through
4 another procedure to figure out what's going to
happen
5 next.

6 Let me talk to you folks.
7 Just give us a few minutes.
8 (Discussion off the record.)
9 (The following proceedings were had at
10 sidebar:)
11 THE COURT: Looking at Engle's Exhibit
5495,
12 counsel indicates he wants to read the entire two
pages
13 to the jury.
14 MR. ROSENBLATT: Correct, because what
15 happens is if I say that I'm going to read
portions,
16 then we take up a lot of time with redesignations
and
17 that kind of thing. If it's in evidence. And
18 relatively short.
19 There are some documents in this pile
here --
20 MR. MOSS: We've got a jury there,
Stanley.
21 MR. ROSENBLATT: -- where I intend to
read
22 briefer excerpts. I'm not suggesting with respect
to
23 all of these. Here's another document, since it's
24 relatively short, that I would want to read the
whole
25 thing, since it's two pages.
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20306
1 THE COURT: The question is whether to
let
2 them go now or what.
3 MR. REID: I believe I'd let them go.
It's
4 going to be a lengthy discussion.
5 THE COURT: If I let them go, I don't
know
6 whether to bring them back tomorrow.
7 MR. ROSENBLATT: Probably, it would make
8 sense, to put aside a good part of the morning to
go
9 over depositions. I would think, depending upon what
you
10 want to do -- I don't have any preference -- if
you
11 were to decide four or five of these I could read,
I
12 could take up another 40 minutes.
13 THE COURT: Let's let the jury go, then
we
14 can discuss where we're going.
15 (The sidebar conference was concluded,
and
16 the following proceedings were held in open
court:)
17 THE COURT: I guess what we'll do is let
you
18 folks go, because we've got a lot of work to do.
It's

not 19 going to take up more time than we thought. We're
20 going to be through with a lot of this stuff.
kind 21 Again, I continually apologize for the
22 of time delays. There's so much material that we
have 23 to go over and so little time to do it.
24 I guess I'll have to get you back here
at 25 10:00 tomorrow. And we'll take the morning, the
rest

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20307
lot 1 of the morning, the attorneys and I, and go over a
have 2 of this stuff, hopefully prepare it so we don't
3 too much of an interruption.
some 4 We have more depositions to consider and
before 5 other matters which are going to take some time
6 we can get all that sorted out.
see you 7 So I guess be patient with us. We'll
8 tomorrow at 10:00 in the morning.
9 (The jurors exited the courtroom.)
Holbrook 10 THE COURT: All right. I read the
see 11 material, because it's only a few pages, but I can
12 where there would be argument on it.
that 13 MR. ROSS: Mr. Newsom will deal with
14 tomorrow.
the 15 THE COURT: There's still the issue of
16 Rosenbaum and Fulford.
is 17 MR. ROSENBLATT: And Fulford, of course,
18 video, so I'd have to arrange for --
19 THE COURT: It's getting overwhelming.
documents 20 Now, you want to read some of these
21 into evidence, and that's also discussionable.
22 So let's hear the opposition.
with 23 MR. HEIM: Your Honor, the first problem
24 the documents that counsel presented at sidebar is
25 that, as I remember them, some of these documents,
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20308
Your 1 particularly the first one, which is the only one
2 that's been mentioned so far, were documents that
3 Honor deferred.
these 4 They were -- we talked about whether

5 documents were admissible or not. They were in
6 connection with Solberg, Mr. Solberg's testimony.
7 Your Honor will recall Mr. Solberg was
the
8 fellow who talked about the AMA and the conspiracy
9 theory of the tobacco companies with the AMA.
10 That particular document that counsel
11 referred to was not admitted into evidence. You
had
12 deferred on that. And I had told Your Honor
earlier
13 this week that I intended to make a motion on
Friday to
14 strike Mr. Solberg's testimony in its entirety.
15 THE COURT: What was the number of that
16 document again?
17 MR. ROSENBLATT: Mr. Heim is just wrong
about
18 that.
19 THE COURT: What's the number?
20 MR. ROSENBLATT: This document was
admitted,
21 5495. 100 percent it was admitted.
22 MR. HEIM: Maybe I'm wrong.
23 MR. ROSENBLATT: I checked the
transcript,
24 because I thought you had said that. And this was
25 admitted during the course of his testimony.
5495.

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20309
1 MR. HEIM: Well, maybe our chart is
wrong.
2 On our chart we have it as deferred. So I guess
I'd
3 have to go back and look.
4 MR. ROSENBLATT: The transcript itself
of
5 Mr. Solberg, which I do not have with me, but I
can
6 represent to the Court that looking at the
transcript
7 of Solberg, 5495 was admitted into evidence.
8 MR. HEIM: See what Your Honor's records
are
9 on this.
10 But whatever they are, the point here is
that
11 on these Solberg documents, in the brief
discussion we
12 had, my recollection of what Your Honor said was
we
13 need to think about this. If there is a problem
with
14 Solberg's testimony, once you heard it in terms of
15 whether it is anything more than an inference on
an
16 inference, why make it worse by overlaying a bunch
of
17 documents on this subject on top of it.
18 And as I said, when I came into Court on

19 Tuesday, I wanted to move to strike Solberg's
testimony
20 and to argue that, but I put it back to Friday so
that

21 we wouldn't delay the jury.
22 So why start with a Solberg document if
23 that's going to be the subject of a motion to

strike
24 which Your Honor will hear?
25 If you're going to read documents, I

would

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20310

1 urge that we read some other kind of documents
that are
2 not the subject of a motion to strike. Because I
don't
3 think the Solberg testimony is admissible
testimony
4 anyway.

5 THE COURT: Ms. Clerk, what's your --
6 THE CLERK: I am checking, Your Honor,

5495.

7 THE COURT: Is what?
8 THE CLERK: I'm checking.
9 MR. ROSENBLATT: It was during Solberg's
10 actual testimony.

11 MR. REID: My records show it wasn't
admitted
12 either. It was not. And I've got the page cite
which

13 I could go and look up.
14 This raises sort of a different

procedural
15 problem. We have the procedure for designation,
and

16 part of the reason for that is if they want to
read
17 part of the document, give us a chance to see if
18 there's a crossdesignation.

19 It's also a problem, if we're seeing the
very

20 first document, they want to read the whole
document,
21 because Mr. Rosenblatt said: We want to read
22 documents; we went sidebar; he still hasn't given

us a
23 list. He has them in a pile, but for whatever
reason,
24 he chooses not to give us a list.

25 The reason for looking at the documents
ahead

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20311

1 of time is to find and resolve some of these
issues;
2 the reason that you put that in the pretrial
order,
3 both for partial documents and full documents.

4 But there's a bigger problem that Mr.
Moss
5 wants to talk about.
6 MR. HEIM: I believe I'm mistaken. I've
been
7 handed --
8 THE COURT: You are. The clerk has
given me
9 a copy of 5495.
10 MR. HEIM: I was just handed a copy of
the
11 transcript at Page 10391. It's a little
confusing,
12 because I say no objection to two other documents,
and
13 then the record says three are admitted. But it
does
14 say 5495 was admitted.
15 THE COURT: Okay. I think Mr. Moss has
got a
16 more esoteric argument.
17 MR. MOSS: I hope it's not entirely
esoteric.
18 I mean it to be fairly practical.
19 And that is this whole concept of
publishing
20 documents to the jury that are already in evidence
at
21 any time other than during closing argument.
22 Once again, I know this is an unusual
case,
23 but it's not -- this part of it is not that
unusual.
24 We have a lot of cases where there are a lot of
25 documents in. We tried a whole bunch of them and
the

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20312
if
1 court has never taken the time, other than perhaps
2 there's a witness there and there's something of
3 interest in that particular document, to allow
either
4 side to sit there and simply read -- that's what
5 closing arguments are about, if you want to use
your
6 time, however you want to do it. The jury is
going to
7 get that document.
8 You can do it in a number of ways. You
can
9 read it to them or tell them: Pay particular
attention
10 to this, this and this.
11 But we're here now, and if Your Honor
12 remembers the Broin trial, we got to a point in
the
13 Broin trial where we basically were in a holding
14 pattern. And he certainly has a right to put in
15 whatever depositions that he desires, and whatever
16 depositions that Your Honor rules, if we have an

17 objection, what portions are admissible.
18 I mean, I think there could have been a
way
19 to streamline all this, but we didn't do it and
we're
20 here. So Your Honor is burdened with taking this
stuff
21 home at night and we're burdened with the jury
marching
22 in and out. I guess we're in the home stretch
now, but
23 there really is, I perceive, a significant problem
in
24 this publication of documents to a jury.
25 You know, I know what they do in other
courts

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20313
1 is not binding on this Court, or even perhaps even
2 persuasive, but I happened to be looking at a
3 transcript of a case that's being tried right now,
4 tobacco case in San Francisco. And one of the
lawyers
5 attempted to publish a document that was put in
after
6 the witness left. And, of course, what the judge
said
7 is: Whoa, that's for closing argument.
8 I'll bring you that transcript, if you
want
9 to see it.
10 THE COURT: I'll take your word for it.
I
11 basically agree with you. The general experience
that
12 we have in these courts, as we practice, is that
if a
13 witness is on a stand and a document is sought to
be
14 introduced, and that document is going to be the
15 subject matter of some interrogation, and, yes,
for the
16 purpose of the jury understanding what the issues
are,
17 yes, you can publish the document at that time and
that
18 makes sense to do it at that point.
19 We published some documents here before.
20 That was an accommodation because we sort of ran
out of
21 witnesses and had some time.
22 MR. MOSS: Yes. And that's at the time
I
23 said: Your Honor, you ought to be thinking about
it,
24 and let's take it up when we come back from
Christmas
25 or New Year's.

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20314
that
to
of
general
witness
not
stand
problem for
that
a
fact
on
closing,
whole
one
privilege
documents

1 THE COURT: And the Court appreciates
2 and I think everybody did. But now if we're going
3 get into this, and I see we've got reams and reams
4 these documents, to say on one hand that the
5 rule is you read the document when you have the
6 here so you can interrogate the witness on the
7 document, that makes sense.
8 On the other hand, to say let's wait and
9 publish any of these until closing argument, then
10 you've got a closing argument which all you do is
11 up there and read documents. That's also a
12 whoever has to do it and listen to it.
13 MR. MOSS: Well, that's a trial strategy
14 each lawyer needs to make.
15 THE COURT: I understand.
16 MR. MOSS: You just can't accommodate --
17 trial court, I suggest, shouldn't accommodate the
18 that somebody wants to do it. Then use your time
19 closing if you want to. I promise you, on
20 Stanley won't be up there reading documents the
21 time.
22 THE COURT: No, I understand that. See,
23 of the problems was basically that we started with
24 these documents. There were objections for
25 and all sorts of things. So a lot of the

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20315
yet.
that
documents
there
get
we

1 were deferred and we haven't really ruled on them
2 So we couldn't really get to that document with
3 witness.
4 On the other hand, a lot of these
5 relate to witness' deposition testimony, and you
6 couldn't come back and reconstruct.
7 MR. MOSS: I understand. Of course,
8 are two aspects to that. Number one, we tried to
9 this done before, and for a whole bunch of reasons
10 didn't, suffice it to say.

11 The other part of it is, Judge, I think,
and
12 I know Your Honor is very mindful of, we've got a
jury
13 here, that we really have an obligation to move
this
14 case with as much dispatch as we can. I mean,
they're
15 coming in and out of here. The last three weeks I
16 don't know what they're thinking about what we're
up
17 to, and I'm sure they think we work, but allowing
this
18 publication simply compounds what already, and at
least
19 my perception, is a problem.
20 The defendants need to get on with their
case
21 too. We've been asking when, you know, because
we've
22 got witnesses that we've got, and so far we've had
a
23 bunch of estimates and none of them have been
right
24 yet. And I really think the time has kind of
come:
25 When are you going to bring it to a close?

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20316
1 And I think that by not allowing the
2 publication, or as Your Honor is inclined, from
hearing
3 how you said to do it, then at least being quite
4 restrictive when it's done, then we can find out
when
5 it is that we can plan on putting on our case.
All of
6 this is, I think, a big picture item.
7 THE COURT: I think the main stumbling
block
8 we're running into are these depositions, because
9 regardless of whether I take them home at night
and
10 review them, we still have to review them the next
day
11 or some time. And that interferes with the
presence of
12 the jury.
13 I don't know of any other way of doing
it
14 except pretrial, and it's too late for that.
We're
15 stuck with that procedure and some of them are not
that
16 easy.
17 We're getting to the point now where
some of
18 the decisions become hard to make because of the
19 overall effect of prior depositions and the types
of
20 questions that you can't change, because a

deposition

21 can't be changed in the sense of fitting it in and
22 tailoring it to the situation that we do have. It
gets
23 very difficult. A lot of stuff probably would not
be
24 asked if the witness were on the witness stand at
this
25 point.

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20317

1 I wish I could speed up or figure out
some
2 way to do the depositions so we wouldn't have to
waste
3 that time. I agree, to sit there and read three,
four
4 different pages of a particular document, document
5 after document, was not really my intent in the
first
6 place either.
7 MR. ROSENBLATT: To put this in
perspective,
8 first of all, to get very basic, Mr. Moss is
acting as
9 though the concept of publishing documents to a
jury is
10 unusual, that it's an alien concept.
11 It is not. I have been in many, many
trials
12 and in run-of-the-mill cases where it's in
evidence,
13 the trial lawyer has the option. You do it with a
14 witness. And quite frankly, one of the reasons
15 tactically that I did not want to go through
documents
16 with witnesses when I had that option was, from my
17 standpoint, they were eminently successful,
because of
18 their sidebars, in chopping up the testimony as it
was.
19 And from my standpoint, I start with a document,
well,
20 it's going to be totally chopped up. So, yes, I
made
21 the choice in certain instances. It's in
evidence. At
22 a given point in time, I will read it to the jury.
23 Now, in terms of the documents that are
24 ultimately going to be introduced, I'm not
suggesting
25 publishing more than five percent of them. And
Your

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20318

1 Honor has said in many, many occasions -- how
divorced
2 from reality can we become? As Your Honor has
noted

case, 3 and said on several occasions, at the end of the
4 we're going to give the jury stacks and stacks of
5 documents. On what fantasy assumption? That
they're 6 going to go through them? That they're going to
go 7 through the documents without direction, without
my 8 being able to say in final argument -- in fact, it
will 9 shorten the final argument in a way: Remember, I
read 10 the whole document to you. It was published to
you on 11 such and such a date, but here's a point I want to
12 emphasize and put up on a board, or something like
13 that.

14 And when Mr. Moss brought this up a
while ago 15 and made pretty much the same argument he's making
16 today, Your Honor took the position, you know, it
can 17 get out of hand, but it's not out of hand yet;
it's not 18 approaching getting out of hand. I haven't said
give 19 me a week to read documents or anything of the
kind. 20

And in terms of, you know, talking about
the 21 jury and everything like that, I would remind the
22 Court, I don't think there was ever, with about 30
23 witnesses that we put on, that there was ever
really 24 that I came to the court with a problem and said,
you 25 know: The guy, he had a problem with the
airplane.

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20319
1 Hardly ever a story. I mean, you were ready for a
2 witness, we had a witness. So, you know, we've
moved 3 it.
4 Now, I think as a practical matter what
we 5 may -- and I certainly -- I don't like the
situation 6 and I think it's unavoidable. I don't think it
could 7 have been pre-tried. I think that was a fantasy,
that 8 you could pre-try a case of this magnitude and
decide, 9 before Your Honor ever heard the first witness,
what 10 was going to be allowable from these depositions.
11 I think the process is infinitely faster
now; 12 that you're in a position to say: Well, this is

13 repetitious; this was done. And Your Honor has
14 obviously developed a pattern. Your rulings are
15 consistent. We know what to expect in the
depositions.
16 But, okay, I mean, that's in the past.
And I
17 think that it would probably make sense at some
point
18 next week to maybe take a day, day and a half,
without
19 the jury, and explain to them and say: This is
really
20 going to shorten the process. And at that point
spend
21 a day, two days, going over all the depositions so
that
22 when the jury comes back, boom, they're here from
9:30
23 to 5:00, and all we do is read depositions. I
don't
24 expect to have any more live witnesses.
25 But because of the nature of the defense
and

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20320
1 the technical approach of the defense, you know,
2 they're going to try to point to any deficiency.
You
3 know, we need to get this stuff into the record.
And
4 it's not ideal, but I really think it's
unavoidable. I
5 think considering other tobacco cases and the
mounds
6 and mounds and mounds of documents, I mean, I
think
7 we're moving pretty expeditiously, although it's
an
8 annoying process. I'm the first to admit that.
It's
9 annoying to me, but I'm not aware of any
alternative.
10 THE COURT: Right now what's annoying me
is
11 the deposition, having to go through them all, and
then
12 take the time to decide which is which. I have
these
13 two, which I have tentatively gone over. I still
have
14 a problem with it; we're going to have to discuss
it.
15 Maybe we can do that now, at least give us
something to
16 do tomorrow. Rather than do documents on, say, a
17 Friday, we could do the depositions. I don't
think
18 that's a problem.
19 Maybe that would be good, because when
we
20 finish with the depositions, then we could take up

the
off,
documents.
I would like to finish the depos first.
MR. ROSENBLATT: That's fine with us.
And I
think it makes sense to do it that way.
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20321
1 I mean, basically, Mr. Reid says I've
had a
2 stack of documents and for some mysterious reason
I
3 chose not to tell them. First of all, no one
asked me
4 to tell them; but, secondly, from my standpoint,
Judge,
5 this was a back-up. If we reached a point, I
wanted to
6 be in a position to say: Well, Judge, to fill the
7 time, I've got a few documents that are in
evidence
8 that I'm happy to read. It was no mystery. It
was
9 that straightforward.
10 MR. MOSS: And that was the context that
I
11 raised this issue, because I knew that we needed
to do
12 something. And Your Honor, I think, said that a
moment
13 ago; that that was a little different, because at
that
14 point we had a jury here. We really had nothing
to do.
15 And that's when I said: Well, Judge, we're not --
but
16 as to this Friday, we don't have any problem of
doing
17 the depositions and not doing the documents, but I
do
18 want to remind the Court that we intend to argue
the
19 motions that we told you about early in the week.
20 THE COURT: We can do that, too.
21 MR. MOSS: I understand we're not going
to do
22 documents. The only reason I ask that is Doc
Schneider
23 was going to come down, and I'm going to tell him
not
24 to do the documents on Friday.
25 THE COURT: He's not in town?
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20322

1 MR. MOSS: No.
2 THE COURT: Let's try to get the depos

out of
for
know
extensive.
time,
remember,
testify at
Houston.
back
not
were
admissible,
documents
in
Where
back

3 the way. I know that they're a lot of extra work
4 me, too, because I've got these two and I don't
5 how many more you mentioned, four or five more.
6 MR. ROSENBLATT: And as you can see,
7 Holbrook, our designations are not nearly as
8 It just occurs to me, when we're talking about
9 just take Eric Solberg as a witness. You
10 Judge, he was here at one time; they argued very
11 vigorously that he shouldn't be permitted to
12 all; we went through all that. He returned to
13 They took his deposition, and then when he came
14 the second time, they argued again that he should
15 be permitted to testify. Your Honor heard their
16 arguments; you made a ruling; he testified; there
17 sidebars; you made rulings: This is not
18 this is admissible. He testified. Certain
19 were introduced through him.
20 I have never been in a situation where
21 that kind of scenario, a witness testifies over
22 objection, and we're now hearing: Well, you know,
23 Judge, we were unsuccessful in persuading you, or,
24 Judge, you were wrong -- where does this end?
25 does this circle end? Two times they kicked him

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20323
deposition;
Your
wanted
to.
motion to
under
offense,
week, I'm

1 to Houston. He comes back; they take a
2 they say: Don't let him testify the second time.
3 Honor lets him testify; not all the evidence I
4 to get in. He testified to whatever he testified
5 Now we're hearing that we're going to hear a
6 strike his testimony. And my response to that is
7 that's what's taking so long, all this time.
8 MR. HEIM: I know this fits very neatly
9 the category that the best defense is a good
10 so I'm going to treat it that way. But I remember
11 earlier in this -- no, it wasn't earlier this
12 sorry. It was last Friday when the subject of the

13 Solberg documents came up en masse, and Your Honor
14 raised the issue saying: Now that I have heard
what
15 Solberg said, I am troubled by it. I need to
think
16 about it.
17 And I made the comment that now that
we've
18 heard what he had to say, his testimony did not
support
19 an inference that it was proper to support. And
that's
20 why it should be stricken, that I would so move,
and
21 Your Honor said we would take that up at some
other
22 time.
23 That's all I'm going to say about Mr.
Solberg
24 at this point.
25 I don't want it to get lost in the
shuffle,

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20324
1 however, that plaintiffs' brief, in opposition to
the
2 motion that we've had pending for three or four
weeks
3 with regard to youth marketing, which they were
going
4 to file on Tuesday, is supposed to be filed,
quote,
5 "some time this week," unquote.
6 And I assume we're still on schedule for
7 that, because whether or not we argue it on Friday
or
8 not, when this subject came up and we talked about
it,
9 counsel said: Well, we want a full opportunity to
10 brief this issue. And I said, I agree; I want
them to
11 have a full opportunity to brief it.
12 And Your Honor said we would have
argument
13 after it had been briefed.
14 So I'm expecting that that brief will be
15 filed this week. And if it is and it's ready, we
16 certainly would want to argue that as well on
Friday.
17 THE COURT: Well, we can take up
whatever we
18 can. There's only so many hours in a day.
19 MR. HEIM: Well, that's true.
20 THE COURT: We'll do what we can do.
21 MR. HEIM: If that's not ready for
argument
22 on Friday, it can be put back, but I don't want it
to
23 be lost.
24 THE COURT: Let's try. Since I've
already

25 gotten two depositions I've gone through already,
and

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20325

1 I've got two more to do tonight, that will take us
up

2 to Thursday. But whatever depositions after that.

3 MR. HEIM: We'll take those up on

Friday.

4 MR. ROSENBLATT: Hopefully, if we devote

5 Friday, we could get through all the depos.

6 MR. MOSS: The note I have from someone

7 behind me is: Can we find out what depos we're

going

8 to do on Friday? There's nothing esoteric about

that

9 one.

10 THE COURT: Depending how quickly we get

11 through this stuff.

12 You mentioned the names of those depos

that

13 you wanted.

14 MR. ROSENBLATT: I mentioned a bunch

when I

15 had a list in front of me. Kelly has it. Dr.

Houston.

16 MS. LUTHER: Arthur J. Stevens,

Holbrook,

17 Spears, McAllister, Kornegay, Horrigan and

Houston.

18 MR. ROSENBLATT: And then I said that

we've

19 also got under discussion --

20 THE COURT: Have those depositions been

21 color-coded?

22 MR. ROSS: I don't know, Judge. I don't

even

23 have Stevens here in the courtroom today.

24 MR. REID: I can tell you on Horrigan,

we'll

25 file tomorrow our usual paper that we file. We

just

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20326

1 got new designations and it's like 200 some pages.

2 COUNSEL: We also got additional

designations

3 on Dr. McAllister.

4 THE COURT: Moving along as fast as we

can

5 go.

6 MR. ROSENBLATT: We've gotten through a

whole

7 bunch of depositions.

8 MR. MARTINEZ: We'll have Kornegay

9 color-coded tomorrow with our usual objections,

and

10 maybe you could give your usual rulings.

11 THE COURT: All right. Usual rulings

apply,
12 so we don't have to worry about it.
13 Do you want to talk about Rosenbaum?
14 MS. LUTHER: Sure.
15 THE COURT: Let's see if we can get
through
16 that anyway.
17 We have never really talked about it.
If
18 there's something that we get to that you really
want
19 to bring to my attention about any of this, do so.
20 MS. LUTHER: I will.
21 MR. ROSENBLATT: Let me find that depo,
22 Judge.
23 MS. LUTHER: Just for starters, the
amended
24 designations that I gave Your Honor today, there
is a
25 counterdesignation that wasn't previously
designated.

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20327
1 THE COURT: Give me a page.
2 MS. LUTHER: Page 4, Line 23 through 25.
3 THE COURT: I have a little mark on
that,
4 pencil mark, or something pointing down.
5 MS. LUTHER: Could I see it?
6 Through Line 2, okay.
7 THE COURT: You just let me know what
you
8 want me to look at while we go. Obviously,
somebody
9 picked it up.
10 Are you ready?
11 MR. ROSENBLATT: On Rosenbaum?
12 THE COURT: Yes.
13 MR. ROSENBLATT: Yes.
14 MS. LUTHER: I think the first objection
we
15 have, Stanley, is one of yours to
counterdesignations.
16 THE COURT: Do you want to just go
through
17 counterdesignations or objections, rather than go
18 through the whole thing? Would that be better?
Or do
19 we need it?
20 Page 3, Line 7 through 25, without
21 opposition.
22 Lines 1 through 7, without opposition.
23 Counterdesignation on the bottom of Page
4,
24 Lines 23 through 25, and on top of Page 5, Lines 1
and
25 2, will be permitted.

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20328

1 Skip to Page 14.
2 MR. ROSENBLATT: 14?
3 MS. LUTHER: Right.
4 THE COURT: No opposition to the entire
page,
5 Lines 1 through 25.
6 MS. LUTHER: Actually, it's 2 through
25,
7 Judge.
8 THE COURT: Well, 2 through 25, okay.
9 That gets skipped to Page 20.
10 MR. ROSENBLATT: 20?
11 MS. LUTHER: Right.
12 THE COURT: No opposition on Lines 17
through
13 25, and on Page 21, Lines 1 through 10.
14 MS. LUTHER: Correct. Then plaintiff
15 withdrew Lines 11 through 25 of their designation.
16 THE COURT: Wait a minute. I don't have
17 anything marked anywhere.
18 MR. REID: Yours is marked correctly.
19 THE COURT: So I don't have anything
else to
20 worry about then.
21 MR. REID: Page 28, I think, is the next
one.
22 THE COURT: That takes us to Page 28.
23 MR. REID: And we have an objection
there.
24 It's an expert opinion.
25 THE COURT: I've been allowing those
kinds of

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20329
1 questions in on people who are connected with the
2 industry.
3 MS. LUTHER: That's an interesting
point,
4 Judge, because Mr. Rosenbaum isn't connected with
the
5 industry.
6 THE COURT: What is he?
7 MS. LUTHER: He's a director and CEO of
The
8 Brooke Group, the holding company.
9 MR. ROSENBLATT: But LeBow testified
that
10 they own it 100 percent. They can hire, they can
fire,
11 the CEO. Brooke is the parent.
12 MS. LUTHER: Rosenbaum's testimony makes
it
13 apparent that he has no involvement whatsoever
with
14 Liggett.
15 MR. ROSENBLATT: Well, is it credible
for
16 this man, who sits on a board of the parent
company of
17 a tobacco company -- you ask him this question.
He

18 says: I don't have a clue. The jury can infer
that's 19 just a ridiculous answer. And it is a ridiculous
20 answer: I don't have a clue.
21 It shows he doesn't care; that it goes
back 22 to, you know, LeBow's testimony in his first
23 deposition: I'm a bottom-line guy. I don't worry
24 about it. I don't care if it causes cancer.
25 It hooks in, Judge.
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20330
1 MR. REID: Your Honor, his argument
makes the 2 point, and it's highly prejudicial to ask these
3 straw men sort of questions.
4 MR. ROSENBLATT: Not prejudicial at all
if 5 they give an intelligent, honest answer.
6 THE COURT: Well, that is open to
question, 7 too. I can understand he's the parent, Brooke.
They 8 do a lot of other stuff.
9 Okay. I'll go along and sustain the
10 objection.
11 Page 29, again he says: I'm not expert.
I 12 don't know.
13 MR. REID: Same objection.
14 THE COURT: If I did that one, I'll have
to 15 do this one. Sustain 17 through 21.
16 Switch to Page 37. I marked that page
out. 17 So sustain the objection on Page 37.
18 38, then we get one of those other
questions 19 about addiction.
20 MR. REID: Same basis. Our argument
would be 21 the same, just addiction instead of causation.
22 THE COURT: Yes, but he's got reasons
here. 23 MR. ROSENBLATT: Well, but if you're not
24 going to allow causation --
25 THE COURT: Depends who we're talking to
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20331
1 here.
2 MR. REID: He's talking about as a lay
3 person, who has no connection at all or no basis
for 4 it, which would be the same fundamental basis as
the 5 previous ruling.
6 MR. ROSENBLATT: Here he has an opinion.
7 MR. REID: But it's not a permitted
opinion.

8 I mean, lots of people have opinions.
 9 THE COURT: I stepped into quick sand
 and I'm
 10 up to my chest. I'm sinking rapidly. And I'm
 going to
 11 have to be consistent. 38, sustained.
 12 Which takes us to 39, also sustained.
 13 40, up to Line 11 and through 23, just
 get
 14 rid of the whole section.
 15 Page 42, 17 through 25, sustained.
 16 43, Lines 1 through 3, and Line 7
 through 9,
 17 sustained.
 18 Page 46, Lines 10 through 22, without
 19 objection.
 20 MR. REID: Go to 74.
 21 THE COURT: Switch to 74.
 22 MR. ROSENBLATT: Page 74?
 23 THE COURT: Yes. There's nothing in
 between.
 24 This is the doctor question. He doesn't know.
 25 MR. ROSENBLATT: Neither does anyone
 else;

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 20332
 1 that's the point.
 2 THE COURT: The point is, is that his
 job to
 3 know? See, if it isn't his job to know that, then
 what
 4 difference does it make whether he knows or
 doesn't
 5 know?
 6 MR. ROSENBLATT: Because it's the most
 7 obvious. You could be in the tobacco industry for
 five
 8 minutes and the first question that would occur to
 you
 9 is, okay, there's a dispute. Who's on our side?
 Who's
 10 on our side?
 11 The answer is nobody or I don't know.
 12 THE COURT: I might be the CEO of Brooke
 and
 13 leave everything else to Liggett.
 14 MS. LUTHER: He's a director of Brooke,
 15 Judge. He's not the CEO.
 16 THE COURT: I'm saying he's a different
 17 category. He's doing whatever Brooke does, and
 I'm not
 18 going to have anything to do with tobacco.
 19 MS. LUTHER: I can't find it in here,
 Judge,
 20 but he testifies that his involvement with Brooke
 has
 21 to do with a trading card company. That's his
 22 involvement with Brooke.
 23 THE COURT: A trading card company?
 24 MS. LUTHER: Baseball cards, things like
 25 that. And he even offers to get cards for all of

the

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20333

Line 1 attorneys and their children at the deposition.
2 THE COURT: See, the question on Page 4,
3 23: What is your connection with Liggett? And he
4 says, on the top of Page 5: I personally don't
have 5 any connection.
6 MS. LUTHER: Exactly.
7 MR. ROSENBLATT: That doesn't prevent
him 8 from gaining information.
9 Judge, I could care less about this
question 10 at this point. And you've excluded so much that
-- 11 THE COURT: But I don't think he's the
right 12 guy. So sustain on 16 through 23 on Page 74.
13 Page 75, I guess he knows what a trade
14 organization is. No opposition anyway.
15 Page 76, no opposition.
16 MR. REID: Go to 87 next.
17 THE COURT: Page 87, no opposition,
Lines 14 18 through 25.
19 MS. LUTHER: Actually, that's a
20 crossdesignation.
21 THE COURT: What is?
22 MS. LUTHER: It's plaintiffs'
23 crossdesignation.
24 THE COURT: Plaintiffs'
crossdesignation?
25 MS. LUTHER: That's what I have it as.
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20334

1 THE COURT: I have it just yellow.
2 MR. REID: I have objections to it.
3 MS. LUTHER: Page 86, Line 14.
4 MR. REID: No objection to that.
5 THE COURT: Wait a minute. Does that
relate 6 to 87?
7 MS. LUTHER: 88, Line 4 is a plaintiff
8 crossdesignation. And I objected to it on the
basis 9 that it's not really crossdesignation, because it
10 doesn't relate to any designation made by any of
the 11 defendants. It's not redirect.
12 THE COURT: Well, maybe he changed his
mind 13 and wants it on direct.
14 MR. ROSENBLATT: Yes, I want it in.
15 MR. REID: May I find out what exactly
we're 16 talking about?

17 THE COURT: Page 86, Line 14.
18 MR. REID: There was no objection on our
part
19 on 86, 14 to 25.
20 THE COURT: Right. I don't see anything
21 here. Plaintiff wants it in. I don't know if
anybody
22 has an objection.
23 MS. LUTHER: I'm objecting.
24 THE COURT: What's the objection?
25 MS. LUTHER: A, what I just mentioned,
and B,
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20335
1 I think as far as 14 through 25 goes, I don't have
a
2 problem with that, but as far as 87 through --
3 THE COURT: Let's talk about 86.
4 MR. REID: I do have objection to 87.
5 THE COURT: Page 86, Line 14 through 25,
6 overrule any objection.
7 Now, Page 87.
8 MR. REID: Our objection there is that
this
9 was just asked and answered on Page 86, Line 14
through
10 25.
11 MR. ROSENBLATT: It's not repetitive at
all.
12 MS. LUTHER: It's repetitive and
13 argumentative.
14 MR. ROSENBLATT: 87 is the board of
directors
15 of the parent company of Liggett. That's the
bottom
16 line of all of them: It's a legal product. We
don't
17 care if it kills people; it's a legal product.
18 He doesn't say that, but that's why I
want it
19 in, because that's his true attitude. And that's
what
20 LeBow said on his first deposition in '93.
21 THE COURT: Okay. Overrule the
objection,
22 Page 87, and the top of 88, Lines 1 through 4.
23 Now we go to Page 100. What difference
does
24 it make where LeBow spends his time?
25 MR. REID: That's our objection.
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20336
1 MS. LUTHER: And LeBow has already
testified
2 to it.
3 MR. ROSENBLATT: I don't care.
4 THE COURT: Good, because I already
marked it
5 out.

6 MR. REID: 114 is next.
 7 THE COURT: Now we go to 114. I've got
 all
 8 kinds of different color codes here.
 9 MS. LUTHER: It's objected to.
 10 MR. REID: Secondhand hearsay, his
 argument
 11 about what somebody thinks about something.
 12 MR. ROSENBLATT: Here he's a very
 13 knowledgeable guy all of a sudden.
 14 MR. REID: It's Mr. Rosenblatt in his
 15 question. The question contains hearsay.
 Certainly
 16 facts that aren't in evidence.
 17 THE COURT: He agrees. He says that's
 their
 18 position. I let it in.
 19 Also, the counterdesignation on Page
 115,
 20 Lines 13 through 25, and 116, 1 through 8.
 21 Page 117.
 22 MR. REID: We object to the rest of it.
 It's
 23 outrageous.
 24 THE COURT: I excluded 12 to 14, 17 to
 25;
 25 Page 118, Lines 1 through 13, and Lines 21 through
 25.
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 20337
 1 I don't know. I can't read the top of
 119.
 2 MS. LUTHER: It's a continuation. The
 rest
 3 of the deposition is all about that line of
 4 questioning.
 5 THE COURT: Well, I excluded it all.
 6 Okay. So I guess that's it, then.
 7 Well, we can do this one tomorrow. It's
 not
 8 going to take a long time.
 9 MR. ROSENBLATT: Not going to take a
 very
 10 long time.
 11 THE COURT: Do you want to try Fulford?
 12 MS. LUTHER: Sure.
 13 MR. ROSENBLATT: I'd rather come in
 early.
 14 You've got the jury coming in at 10:00. My
 preference
 15 would be to come in early, like quarter to 9:00.
 16 THE COURT: So I've already looked at
 17 Fulford. I've gone through -- I really have read
 those
 18 pages, 151 to 168, or whatever it is, of Holbrook.
 19 Do you want to discuss that issue?
 Who's
 20 doing Holbrook?
 21 MR. ROSS: I could do it if I had the
 22 deposition. I don't have it. Mr. Newsom was
 going to

23 do it tomorrow. Oh, I have read it also.
24 THE COURT: Well, the essence of the
thing
25 is -- if I'm reading the right deposition; let me
just

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1 double-check -- this is the one where he severely
2 criticizes the tobacco industry as being
obstructionist
3 and not truthful and everything else. But there
isn't
4 any solid fact mentioned as to what it is he's
talking
5 about.
6 He says: They made some false
statements and
7 false accusations, took things out of context and
done
8 so during depositions and done so during the time
that
9 I was working with the Surgeon Generals, and
everything
10 they do, they nitpick and lie here and there, and
11 giving false impressions as to the meaning, even
though
12 what they say may not be by its very nature
untrue, and
13 the implication may be that that's the pattern.
14 The problem is, that would be all well
and
15 good, if we had some example of what he was
talking
16 about.
17 MR. ROSENBLATT: We do, from the other
18 testimony. The pattern. The jury has now heard
the
19 pattern from the CEOs. It's obvious what he's
talking
20 about. They say there's a scientific controversy,
21 nonexistent. They say cause hasn't been proven.
22 MR. ROSS: He can't give an opinion as
to
23 what other people -- he flat out says -- I mean, I
24 remember from having read it, when asked what is
he
25 talking about, he says: Geez, it's been 10 years
since

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20339

1 I read it.
2 THE COURT: I was hoping for where he
would
3 say, on such and such an occasion.
4 MR. ROSS: In general, that was our
5 objection, because he never specifies any
particular
6 statements at any time. It's sort of a broad
brush:

7 Well, I know they did this.
8 MR. MOSS: The other point that
9 Mr. Rosenblatt just made underscores it. He says:
10 Anyone can tell from this.
11 MR. ROSENBLATT: Not anyone, the jury.
12 THE COURT: We're beyond that. I think
we've
13 established that fact through the other witnesses,
that
14 that's the position you're taking, blah, blah,
blah,
15 blah; that the party line is so and so.
very
16 But he makes very specific references to
17 damaging statements: that they lied; that they
18 committed subterfuge; that they tried to obstruct.
And
19 these things need to be backed up with fact. You
just
20 can't throw it out and say: Well, I remember some
time
21 ago they said something which was really terrible
and
22 it obstructed.
23 That was my problem. Had he come in and
24 said: Look, this is the document we were
discussing.
25 This is what we said. This is what we did.
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20340
1 Where is their lie? Here is the
statement
2 which they pulled out. Well, this is the
statement
3 that they made on such and such an occasion,
whereas
4 the truth of the statement is over here.
5 The implication is there, but it's by
6 inference and innuendo, and that's where the
problem
7 comes in. I had a lot of problem with it. My
8 inclination is to keep it out. I'll review it
tonight
9 just to double-check, but I'm really inclined not
to
10 allow it.
11 MR. ROSS: Don't review it again on my
12 account. I agree with your inclination.
13 THE COURT: Yes, but you may be wrong.
But
14 it's serious enough that I'm going to have to look
at
15 it again and make sure. But that's my thought
when I
16 first read it. Sometimes first impressions are
better.
17 So that takes care of Holbrook.
18 MR. MOSS: We're going to do Fulford?
Are we
19 doing Fulford today?
20 THE COURT: Well, we don't have a jury.

21 MR. MOSS: I know we don't have a jury.
I
22 mean, are we going to go over Fulford?
23 THE COURT: Didn't I do Fulford?
24 MR. MOSS: No. That's the one you had.
25 THE COURT: He wants to do it tomorrow
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20341
1 morning.
2 Stevens I'm looking at tonight.
3 MR. ROSS: Is that color-coded, the one
he
4 gave you?
5 THE COURT: Stevens? Yes.
6 MR. ROSS: Now, if the color is wrong,
you
7 can blame him this time.
8 THE COURT: I'm halfway through that
one.
9 MR. HEIM: So we'll do Fulford in the
10 morning?
11 THE COURT: We'll look at Fulford in the
12 morning.
13 MR. HEIM: 9:00?
14 MR. ROSENBLATT: 9:00 is fine.
15 THE COURT: Okay. 9:00 is fine.
16 We did Orlowsky. Try to get to me, as
early
17 as you can, the other depositions that you need me
to
18 read, because I don't want to hold them just for
the
19 last day. Bad enough I've got to read them in the
20 first place.
21 All right, gentlemen, ladies.
22 (Court was adjourned at 4:40 p.m.)
23
24
25

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